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In The
Supreme Court of the United States

NORMA MCCORVEY,
FORMERLY KNOWN AS JANE ROE,

Petitioner,

v.

WILLIAM "BILL" HILL, DALLAS COUNTY
DISTRICT ATTORNEY AS SUCCESSOR
IN OFFICE TO HENRY WADE,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Petitioner Norma McCorvey, the former "Jane Roe" in *Roe v. Wade* comes before this Court as an original party asking that the judgment in this case be vacated pursuant to FRCP Rule 60(b). Since the original judgment in *Roe v. Wade*, factual conditions surrounding abortion have changed significantly demonstrating that abortion hurts women. Evidence of those changed factual conditions includes: the testimony of women harmed by abortion; medical studies documenting abortion injuries; an explosion of knowledge since 1973 concerning the effects of abortion on women; and, the fact that abortion clinics do not provide the normal doctor-patient relationship anticipated by *Roe*. There have also been significant changes in legal conditions, including forty-six states that have enacted laws transferring the burden of unwanted child care to society, and this Court's Federalism jurisprudence restoring more autonomy to the states. The *Roe* decision is also a case of great national importance, and therefore, the questions presented are:

1. Should the original judgment in *Roe v. Wade* be vacated under Rule 60 due to the substantially changed factual and/or legal conditions that make *Roe* no longer just or equitable for prospective application?

2. Is Petitioner Norma McCorvey entitled under Rule 60 to any relief, substantive or procedural?

3. Should the Court, at a minimum, require a hearing to afford fundamental due process which would lead to determining whether *Roe v. Wade* should be re-examined?

PARTIES TO THE PROCEEDINGS

Petitioner is Norma McCorvey, the original "Jane Roe" of *Roe v. Wade*.

Respondent is William "Bill" Hill, District Attorney of Dallas County, as successor in office to Henry Wade.

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OPINIONS BELOW

The opinion of the court of appeals is reported at 385 F.3d 846 (5th Cir. 2004). App. at 1-12. The opinion of the district court is found at 2003 U.S. Dist. LEXIS 12986, 2003 WL 21448388 (N.D. Tex., June 19, 2003). App. at 17-25.

JURISDICTION

The revised judgment of the court of appeals was entered on September 17, 2004. A timely petition for rehearing en banc was denied on October 18, 2004. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

STATUTES AND RULES INVOLVED

The relevant constitutional provisions, statutes, and rules involved in this case are set forth at App. at 28-29. The most important rule is FED. R. CIV. P. 60(b) which states in relevant part:

Rule 60. Relief from Judgment or Order

> (b) . . . On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, . . . for the following reasons: . . . (5) . . . it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

STATEMENT OF THE CASE

This case involves a judgment, originally decided by a three-judge District Court in the Northern District of Texas under federal question jurisdiction, 28 U.S.C. § 1331. On June 17, 1970, the lower court declared the Texas abortion laws unconstitutional.[1] On January 22, 1973, the Supreme Court of the United States affirmed.[2]

On June 17, 2003, Norma McCorvey (hereinafter "Petitioner" or "McCorvey"), the original party known as

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[1] *Roe v. Wade*, 314 F. Supp. 1217 (N.D. Tex. 1970).

[2] *Roe v. Wade*, 410 U.S. 113 (1973) (hereinafter "Roe").

"Jane Roe" in *Roe v. Wade*, filed a Rule 60 Motion for Relief from Judgment (hereinafter "Rule 60 Motion" or "Motion"), App. at 163-188, based on changed conditions relying on this Court's decision in *Agostini v. Felton*.[3] The Rule 60 Motion requested a three-judge court, an evidentiary hearing, and oral argument. App. at 163-188. It provided case law and authorities for its Motion and included 5,347 pages of sworn evidence including affidavits from: Petitioner McCorvey; over 1,000 post-abortive women; scientific and medical experts; and, former abortion clinic personnel. (R. vol. 1, 0003 et seq.).

Only two days later, on June 19, 2003, the district court denied the Rule 60 Motion as untimely stating that thirty years after *Roe* was too long. (App. at 17-25). The district court also denied the request for a three-judge court and an evidentiary hearing. (App. at 17-25). On July 3, 2003, Petitioner filed a timely Motion for Reconsideration. (App. at 213-243). The district court denied that Motion two days later on the same grounds. (App. at 13-16).

An appeal was timely filed with the United States Court of Appeals for the Fifth Circuit. McCorvey argued that the district court abused its discretion because: (a) it ignored the Court of Appeals' recent directive in *Collins v. Morgan Stanley Dean Witter*[4] mandating proper and careful consideration of Rule 60 motions; (b) the Motion should have been granted because it was timely, her evidence was legally sufficient and compelling, and procedural requirements had been met; (c) in the alternative, an evidentiary hearing should have been held; and, (d) the district court lacked jurisdiction to enter an order denying a three-judge court.

On September 14, 2004, the panel of Judges Jones, Wiener, and Prado dismissed the appeal and held that (a)

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[3] 521 U.S. 203 (1997) (hereinafter *Agostini*).

[4] 224 F.3d 496 (5th Cir. 2000).

although the original action in *Roe* was tried by a three-judge court, the Rule 60(b) Motion was not a matter for a three-judge court;[5] (b) the district court erred in concluding that thirty years was too long; (c) the case was moot even though the district court did not address that issue;[6] and, (d) the district court did not abuse its discretion in denying an evidentiary hearing.[7] The court held the Motion was moot because the Texas statutes criminalizing abortion had been repealed by implication.[8] Because repeal by implication had not been raised before, Petitioner filed for rehearing en banc addressing the mootness issue arguing the Texas abortion statutes were not repealed either expressly or by implication.[9] The court denied the petition for rehearing en banc on October 18, 2004, without opinion.[10]

INTRODUCTION

This case involves questions of exceptional national importance that can only be decided by this Court. It squarely presents to this Court the question of whether prospective application of *Roe v. Wade* remains just and equitable given the changed factual and legal conditions surrounding abortions since 1973, and it goes to the heart of the balance that was struck in *Roe*. Only this Court can decide this question, for *Roe* itself effectively foreclosed any other branch of federal or state government, and even lower courts, from addressing the substantial scientific and medical evidence that abortion hurts women.

Petitioner McCorvey, the original plaintiff in *Roe v. Wade,* seeks relief from judgment under Rule 60(b) of the

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[5] Panel Opinion, App. at 3.

[6] Panel Opinion, App. at 6, n.4.

[7] Panel Opinion, App. at 7.

[8] Panel Opinion, App. at 5-6.

[9] The Petition for Rehearing En Banc solely and completely addresses the mootness issue and is reproduced in full in the Appendix, App. at 244-269.

[10] Order Denying Rehearing En Banc (October 18, 2004). App. at 26-27.

Federal Rules of Civil Procedure on the grounds it is no longer just. Rule 60(b) allows the Court to consider whether a prior decision remains "equitable" or "just" in light of changed factual and/or legal conditions. There have been substantial changes in *both* the factual and legal conditions. This case thus provides the Court with its first opportunity to review *Roe* in light of over thirty years of experience with legalized abortion and its effect on women. The substantial body of evidence proves prospective application of *Roe* is unjust. The Court should grant Petitioner a writ of certiorari and take this question of great national importance.

REASONS FOR GRANTING CERTIORARI

I. WHEN AN IMPORTANT AREA OF SOCIAL RESPONSIBILITY IS CONSTITUTIONALIZED, AFFECTING THE HEALTH OF MILLIONS OF WOMEN AND EFFECTIVELY WITHDRAWING IT FROM THE LEGISLATIVE ARENA AND LOWER COURTS, THIS COURT HAS A SPECIAL DUTY TO MONITOR SUBSTANTIALLY CHANGED CONDITIONS TO ENSURE JUSTICE AND PROTECT WOMEN'S HEALTH.

The Court essentially removed the regulation of the practice of abortion from the legislative and political process; therefore, the Court is the only entity that can truly consider the factual and legal changes concerning abortion since 1973.[11] After reviewing McCorvey's legally sufficient and compelling evidence consisting of 5,347 pages of affidavits of post-abortive women, medical and psychological experts, and former abortion clinic personnel, Judge Edith Jones in her concurring opinion expressed her fervent hope that this Court would acknowledge the developments and re-evaluate *Roe*.[12] Judge Jones based her hope on the evidence which she summarized as follows:

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[11] Panel Opinion, App. at 12 (Jones, J., concurring).

[12] *Id.* "One may fervently hope that the Court will someday acknowledge such developments and re-evaluate *Roe* and *Casey*

(Continued on following page)

McCorvey presented evidence that goes to the heart of the balance *Roe* struck between the choice of a mother and the life of her unborn child. First, there are about one thousand affidavits of women who have had abortions and claimed to have suffered long term emotional damage and impaired relationships from their decisions. Studies by scientists, offered by McCorvey, suggest that women may be affected emotionally and physically for years afterward and may be more prone to engage in high-risk, self-destructive conduct as a result of having had abortions. Second, *Roe*'s assumption that the decision to abort a baby will be made in close consultation with a woman's private physician is called into question by affidavits from workers at abortion clinics, where most abortions are now performed. According to the affidavits, women are often herded through their procedures with little or no medical or emotional counseling. Third, McCorvey contends that the sociological landscape surrounding unwed motherhood has changed dramatically since *Roe* was decided. No longer does the unwed mother face social ostracism, and government programs offer medical care, social services, and even, through "Baby Moses" laws in over three-quarters of the states, the option of leaving a newborn directly in the care of the state until it can be adopted. Finally, neonatal and medical science, summarized by McCorvey, now graphically portrays, as science was unable to do 31 years ago, how a baby develops sensitivity to external stimuli and to pain much earlier than was then believed. In sum, if courts were to delve into the facts underlying *Roe*'s balancing scheme with present-day knowledge, they might conclude that the woman's

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accordingly. That the Court's constitutional decision making leaves our nation in a position of willful blindness to evolving knowledge should trouble any dispassionate observer. . . ." *Id.*

> "choice" is far more risky and less beneficial, and the child's sentience far more advanced, than the *Roe* Court knew.[13]

Judge Jones discusses the "perverse result"[14] that an issue that affects millions of women and unborn babies cannot be heard or effectively debated:

> At the same time, because the Court's rulings have rendered basic abortion policy beyond the power of our legislative bodies, the arms of representative government may not meaningfully debate McCorvey's evidence. The perverse result of the Court's having determined through constitutional adjudication this fundamental social policy, which affects over a million women and unborn babies each year, is that the facts no longer matter . . .[15]

The sheer impact and importance of *Roe* on women, and its immense effect on the Nation, warranted at a minimum an evidentiary hearing to examine the changes in the factual and legal conditions since 1973. The evidence of this impact is widespread and undeniable as Justice Sandra Day O'Connor has noted:

> Abortion is still hotly debated in all political arenas. No one, it seems, considers the Supreme Court decision in *Roe v. Wade* to have settled the issue for all time. Such intense debate by citizens is as it should be. A nation that docilely and unthinkingly approved every Supreme Court decision as infallible and immutable would, I believe, have severely disappointed our founders.[16]

Justice Ruth Bader Ginsburg has commented that *Roe*'s "Heavy-handed judicial intervention was difficult to

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[13] Panel Opinion, App. at 8-11 (Jones, J., concurring) (extensive footnotes discussing scientific studies).

[14] *Id.* at 12.

[15] *Id.*

[16] Sandra Day O'Connor, THE MAJESTY OF THE LAW: REFLECTIONS OF A SUPREME COURT JUSTICE 45 (Random House 2003).

justify and appears to have provoked, not resolved conflict."[17] Justices have publicly criticized *Roe*.[18]

Like the Court in *Roe*, Petitioner McCorvey thought that abortion would help her.[19] She was not told about any consequences. She placed the *Roe* baby for adoption and never had an abortion. Subsequently, she worked in several abortion clinics and saw abortion first-hand – the crying women, baby parts, inadequate counseling, the lack of informed consent and no real doctor-patient relationship.[20] She came to understand through her first-hand experience, as well as from the testimony of women who had experienced abortion, that abortion hurts women. The reality of abortion practice can change the mind of anyone willing to look at the evidence, as it did for McCorvey. "From time to time – with due solemnity, and after much searching of conscience – the Supreme Court has overruled its own decisions."[21]

Thirty-two years later, this Court now has information that was not available in 1973. Petitioner outlined in her Rule 60 Motion the significantly changed factual and legal conditions. App. at 163-188. What this Court did not know in 1973 is now knowable through advances in medicine, science, and technology. Although this Court believed it was helping women, the real life experiences of women over the last thirty years now demonstrate that abortion hurts women.

By constitutionalizing the right to abortion in *Roe*, state legislatures and lower courts cannot decide the issue. The

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[17] Ginsburg, *Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade*, 63 N.C. L. REV. 375, 385-86 (1985).

[18] Chief Justice Rehnquist, concurring in part and dissenting in part, joined by Justices White, Scalia, and Thomas stated: "We believe that *Roe* was wrongly decided, and that it can and should be overruled consistently with our traditional approach to *stare decisis* in constitutional cases." *Planned Parenthood v. Casey*, 505 U.S. 833, 944 (1992) (Rehnquist, C.J., concurring in part and dissenting in part).

[19] Affidavit of Norma McCorvey, App. at 31.

[20] Affidavit of Norma McCorvey, App. at 37-41.

[21] Anthony Lewis, GIDEON'S TRUMPET 10 (Random House 1964).

Supreme Court has frozen the law based on obsolete 1973 assumptions and prevented the normal regulation of the practice of medicine.[22] This Court now stands as the sole legal entity responsible for protecting women and children from the harm of abortion, which the evidence shows is occurring daily on a vast scale, and therefore, justice requires review of its decision in *Roe v. Wade*.

II. THE FACTUAL AND LEGAL CONDITIONS UNDERLYING *ROE* HAVE MATERIALLY AND SUBSTANTIALLY CHANGED SINCE 1973, AND THEREBY RENDER PROSPECTIVE APPLICATION OF *ROE* UNJUST.

A. Relief from Judgment Is Appropriate If There Has Been a Significant Change in Either Factual or Legal Conditions.

It is appropriate to grant a Rule 60(b) Motion when the party seeking relief can show "'a significant change either in factual conditions or in law.' A court may recognize subsequent changes in either statutory or decisional law."[23] Both need not be proven. This is especially true where changed circumstances have turned the law into an "instrument of wrong."[24] There have been significant changes in both factual circumstances and law since the original judgment in *Roe*. In the Record, which has already been filed with the Clerk,[25] there is legally sufficient and

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[22] For example, a woman may not legally choose to use heroin in the United States, nor may she use Laetrile treatments for cancer, nor may she engage in prostitution, even though all of these involve a liberty interest in her own body. Legislatures are free to act in these areas based on changing social, factual, and legal conditions.

[23] *Agostini v. Felton*, 521 U.S. 203, 215 (1997) (*citing Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992) and *Railway Employees v. Wright*, 364 U.S. 642 (1961)).

[24] *Railway Employees v. Wright*, 364 U.S. 642, 647 (1961).

[25] A Rule 32 filing letter was used due to the extensive nature of the evidence required to document changed factual conditions, which is too voluminous to attach here. The Rule 32 filing letter summarizes the most important evidence. App. at 189-212.

substantial evidence of changed factual and legal conditions, which establishes that *Roe* has become an "instrument of wrong" because it results in injuries to many innocent victims.[26] Accordingly, it is no longer just or equitable to give *Roe* prospective application.

Application of the doctrine of *stare decisis* does not lead to a contrary result. *Stare decisis* is at its weakest when interpreting the Constitution because such "interpretation can be altered only by constitutional amendment or by overruling our [the Court's] prior decisions."[27] In constitutional cases, "correction through legislative action is practically impossible,"[28] thus leading to what Judge Jones called the "perverse results" of this case.[29]

Petitioner's evidence met the established legal standard in *Agostini v. Felton,*[30] the lead case applying Rule 60 to a prior decision of this Court. Both lower courts completely ignored *Agostini*. In *Agostini,* this Court held that it had sole jurisdiction and authority to overrule its prior twelve-year-old ruling when considering a Rule 60(b) motion as well as the authority to overrule a companion case.[31] Based on *Agostini,* the threshold issue is "whether the factual or legal landscape has changed since . . . [the prior ruling of the Court]."[32]

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[26] *See Railway Employees v. Wright*, 364 U.S. 642, 647 (1961).

[27] *Agostini v. Felton* 521 U.S. 203, 235 (1997).

[28] *Payne v. Tennessee*, 501 U.S. 808, 828 (1991).

[29] Panel Opinion, App. at 12, (Jones, J., concurring).

[30] 521 U.S. 203, 235 (1997).

[31] *Agostini v. Felton*, 521 U.S. 203 (1997). Petitioner McCorvey also filed Sandra Cano's Affidavit, the "Doe" of *Doe v. Bolton*, *Roe*'s companion case, supporting reversal. (R. at 1411 – 1421) (hereinafter R. cites to evidence generally refer to the bates stamp number on the original 5,347 pages of evidence attached to Petitioner's Motion. This is the easiest method of finding the document).

[32] *Id.* at 216.

B. There Have Been Significant Changes in the Factual Conditions Underlying *Roe* Since 1973, Including Evidence of Psychological and Physical Harm to Women.

Petitioner's substantial evidence outlined the changed factual conditions regarding the physical and psychological consequences of abortion to women. Abortion was illegal in most states and relatively rare in 1973.[33] No evidence existed then regarding how widespread, legalized abortion would actually affect women. The Court assumed that abortion would be good for women and made many other non-evidence-based assumptions. The Court assumed abortion was like other medical procedures and as safe as childbirth because the long-term effects of abortion on women were unknown at the time.[34] Based on the little evidence before it, a single affidavit from Petitioner, the Court knew that unwanted pregnancies could put severe pressure on women and that women needed help and compassion in such situations.[35] The Court, however, had no evidence or experience on whether abortion would in fact help or hurt women in the long run. The evidence from post-abortive women now shows abortion is a short-term "solution" with long-term negative consequences.[36]

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[33] *Roe v. Wade*, 410 U.S. 113, 118, n.2 (1973).

[34] *Id.* at 149-50.

[35] *Id.* at 153.

[36] *See, e.g.*, Scherrie, "Twenty-five years later, I still cannot talk about it without tears and pain in my heart. It all looks simple on paper and seems like an easy way out of a bad spot, but no one tells you that the easy way out will cost you later in emotional damage and physical problems." (R. 1200). Nora, "It never goes away and you will always think of what could have been and the anger of how the government allows this hideous procedure." (R. 304). L.M.C., "[I]t hurts women physically and emotionally! That it does not end when you leave the clinic." (R. 295). Dianne, "I didn't know that the hurt would never go away." (R. 376). *See also* App. at 53, 56, 68, 75-76, 81, and 115 (hereinafter, references to Women's Affidavits not in the Appendix use R. and the bate stamp number attached to the original Rule 60 Motion, which is the easiest way to find individual affidavits that are not in the Appendix).

Abortion has negative psychological effects on women.[37] *Casey* placed abortion in the range of choices that are "central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment."[38] However, the Court of Appeals for the Fifth Circuit recently cited testimony that abortion as practiced is "almost always a negative experience for the patient. . . ."[39] In *Bell*, the Court of Appeals struck down Texas abortion facility regulations that required Texas abortions to be done in a manner that enhanced women's "self-esteem" and "dignity."[40] Contrary to the non-evidence-based assumption in *Casey*, the decision in *Bell* and the Women's Affidavits totally refute the assumption that abortion enhances female dignity, self-esteem, and autonomy.[41]

As Petitioner McCorvey's Affidavit and the Affidavits of more than 1,000 women who have experienced abortion now show, a vast gulf exists between theoretically supporting an abortion and experiencing one. These more than 1,000 Affidavits constitute the largest body of direct, sworn evidence in the world on the adverse effects of abortion on women.[42] Ironically, the abortion itself often causes a destructive cycle which may lead to more abortions.[43]

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[37] *See, e.g.,* Nicole, "Abortion is so devastating that I would never do it again – even at the cost of my own life." App. at 70.

[38] *Planned Parenthood v. Casey*, 505 U.S. 833, 851 (1992).

[39] *Women's Medical Center v. Bell*, 248 F.3d 411, 418 (5th Cir. 2001).

[40] *Id.*

[41] For example, Camelia, "I have suffered with low self-esteem, self-hatred, suicidal impulses, constant anxiety (especially about sex and about making decisions). . . ." App. at 120. A.C.N., "My abortion took away my sense of self worth and self confidence." App. at 124.

[42] R. 15-1410, hereinafter referred to as "Women's Affidavits." For example, *see* Victoria, "All they would need to see is the pain, sorrow and grief that I carry with me for the rest of my life." (R. 763). Debra, "While I was still under the effects of the sedation, but after the procedure was completed, I began loud, uncontrollable sobbing . . . I can honestly say this was and is the lowest day of my life." (R. 1202).

[43] *See, e.g.*, S.M.P., "I immediately gained lots of weight and drank . . . I felt it poisoned everything I thought, felt or did." (R. 1016). *See generally* Affidavit of Dr. Burke (R. 1422-1667).

Women are overwhelmed with the guilt and depression of abortion for years after having an abortion.[44] In the Women's Affidavits, post-abortive women were asked: "How has your abortion affected you?" The women's responses show the Court the devastation caused by their abortions.[45] Excerpts from one hundred Women's Affidavits are included for the Court's general review in the Appendix. App. at 43-162. All of the more than 1,000 Women's Affidavits were filed with the Clerk of the Supreme Court under Rule 32 and are in the Record at R. 15-1410.

The Affidavit of Dr. David Reardon, one of the world's leading experts on the effects of abortion on women, and the Affidavit of Dr. Theresa Burke, a clinical psychotherapist who has counseled hundreds of post-abortive women, further demonstrate the devastating psychological consequences of abortion.[46]

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[44] *See* Brandy, "No one told me that I would hear cries in the middle of the night." (R. 1251). Beverly, "It's not a quick and easy solution. Don't do it! It will haunt you the rest of your life." App. at 84. *See generally,* the Women's Affidavits (R. 15-1410); the Affidavit of Theresa Burke, Ph.D. (R. 1422-1667); the Affidavit of David Reardon, Ph.D. (R. 1668-1804), Exhibits to Affidavit of David Reardon, Ph.D. (R. 1805-4307); the Client Intake Records From Pregnancy Care Centers (R. 4308-5188); the Affidavit of Carol Everett, former abortion provider (R. 5189-5196). *See also* App. at 45, 46, and 47.

[45] For example, Amy Marie, "It devastated me. I had nightmares, flashbacks, fits of rage, uncontrollable crying, trouble sleeping, and could not look at pregnant women or children without feeling hurt, anger, and guilt." (R. 1159).

[46] *See* the Affidavit of David Reardon, Ph.D., filed with the Clerk of the Court under Rule 32, R. 1668-1804, Exhibits to Affidavit of David Reardon, Ph.D. (R. 1805-4307) (citing over 300 medical and scientific articles or studies, Dr. Reardon stated: "Newly found research has discovered that women who abort, compared with women who carry their pregnancy to term, are more likely to require psychiatric care, to suffer from anxiety, sleep disorders, sexual dysfunction, eating disorders, promiscuity, depression, and other negative emotions, which can cause behavioral problems in the children born to them subsequently. They are more likely to remain on Medicaid longer, to have more subsequent health care claims, and to have more subsequent pregnancies and miscarriages. In addition, aborting women are more likely to

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Abortion has also had negative physical effects on women. As the Women's Affidavits and the scientific evidence demonstrate, there are many physical complications that can result from abortion.[47] These complications include, but are not limited to: increased bleeding in subsequent pregnancies, infertility, miscarriages, ectopic pregnancy, prematurity, endometriosis, pelvic inflammatory disease, uterine perforations, genital tract infection, placenta previa, and retention of placenta.[48] These complications are not only hazardous to the immediate well being of the mother, but they can also have lasting effects on her health and the health of her subsequent children.

In addition, suicide is one of the effects of abortion.[49] The suicide rate for women who have had an abortion is significantly higher than for those who carry their pregnancies to

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commit suicide, abuse drugs or alcohol, and have higher rates of divorce.) (footnotes omitted); the Affidavit of Theresa Burke, Ph.D. (R. 1422-1667). The Rule 32 filing letter with a Summary of the Evidence is in App. at 189-212. *See, e.g.*, Julie, "One month later I had a nervous breakdown . . . " App. at 155; Beth, "I was suicidal; full of guilt and shame. Suffered from fear and depression. Caused marital and relational problems, crying spells, anxiety, panic attacks, sleep disturbances. Suffered most on anniversary of abortion." App. at 149. *See also* App. at 58, 64, "torment", App. at 68, among many others.

[47] Complications from all types of abortions, as described in the GALE ENCYCLOPEDIA OF MEDICINE, include "uncontrolled bleeding, infection, blood clots accumulating in the uterus, a tear in the cervix or uterus, missed abortion where the pregnancy continues, and incomplete abortion where some material from the pregnancy remains in the uterus."

[48] *See* Summary Affidavit of David Reardon, Ph.D. (R. 162 of the Court's Record numbers, attached to Motion for Reconsideration), Affidavit of David Reardon, Ph.D. (R. 1668-1804), Exhibits to Affidavit of David Reardon, Ph.D. (R. 1805-4307); *see also* the Women's Affidavits (R. 15-1410).

[49] For example, Kathy, "I would tell them about the hell I went through. About hearing babies cry when none were around, being suicidal, an alcoholic." (R. 530). Women specifically testified of suicidal thoughts at App. at 65, 71, 92, 107, 109, 115, 120, 149, 151, 153, and 161, among many others.

term.[50] Abortion can lead to depression and anxiety and other mental disorders. To deal with this, many women turn to suicide. As a result of the shame and guilt, many women feel they do not deserve to live, as the Women's Affidavits repeatedly demonstrate. The felt shame often prevents them from seeking help. The resulting feeling of isolation leads to severe depression and a search for a way out, such as suicide.[51] There is compelling scientific and medical evidence since 1973 that clearly demonstrates that human life begins at conception,[52] and therefore, many women express great remorse over the "murder" of their own child.[53] This evidence was presented in the Record and could have been more thoroughly presented at the evidentiary hearing which was denied.

In sum, the Court may come to believe, after reviewing the evidence, that abortion creates problems more closely related to the Court's concerns about assisted suicide than the ideal situation assumed in *Roe* and *Casey*. As in *Glucksberg*,[54] abortion and assisted suicide may have a certain appeal in hard cases, but knowledge of the reality helps remove the illusory luster, especially when multiplied by millions. In theory, abortion is supposed to be free and voluntary, but like assisted suicide, the "knowing and responsible mind is harder to assess,"[55] than one would anticipate. Additionally, "there is no reason to think the democratic process will not strike the proper balance

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[50] *See* Affidavit of David Reardon, Ph.D. (R.1668-1804), Exhibits to Affidavit of David Reardon, Ph.D. (R. 1805-4307).

[51] *See* the Women's Affidavits, R. 15-1410; the Affidavit of Dr. Theresa Burke, R. 1422-1667; the Affidavit of David Reardon, Ph.D., R. 1668-1804, Exhibits to Affidavit of David Reardon, Ph.D., R. 1805-4307.

[52] *See* Scientific and Medical Analysis R. 5197-5347.

[53] For example, Wilma, "[y]ou feel like you have committed murder." App. at 52 and R. 000133. For further references by women to murder *see* App. at 43, 60, 72, 74, 75, 86, 94, 103, 106, 108, 116, 118, 125, and 129, among many others.

[54] *Washington v. Glucksberg*, 521 U.S. 702 (1997).

[55] *Id.* at 784 (Souter, J., concurring).

between the interests of terminally ill [here, pregnant women], . . . and the state's interest in protecting those who might seek to end life mistakenly or under pressure,"[56] as is all too often the case with women in unwanted pregnancies.

C. There Have Been Significant Changes in Legal Conditions Underlying *Roe* Since 1973, Including Changes in the Law of Federalism, and "Baby Moses" Laws in Forty-Six States Which Shift the Burden of Unwanted Child Care from Women to Society.

In recent years, there have been significant changes in the law of federalism, which could justify returning to the states the decision whether to allow or prohibit abortion. Before *Roe* federalized abortion, health and safety issues and specifically abortion were traditional state and local concerns.[57] Beginning in 1995 with *United States v. Lopez*,[58] there has been a renewed emphasis on the judicial enforcement of the boundary lines of federalism.[59] While the Court has focused on Congress in *Lopez* and its progeny, the doctrine of federalism applies to the dangers of overreaching national power among all branches of government. In fact, "the danger to federalism may be greater from the federal courts than from Congress simply because judicial intervention is anti-democratic" such that "the states have relatively little recourse."[60] The common thread

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[56] *Id.* at 737 (O'Connor, J., concurring, joined by Ginsburg, J.) (further analogies to assisted suicide were developed in the Motion and the full Record).

[57] *Roe*, 410 U.S. at 139-140 n.34-37; *see also Webster v. Reproductive Health Services*, 492 U.S. 490, 520 (1989) (commenting that *Roe*'s framework pertained to "areas of medical practice traditionally subject to state regulation").

[58] *United States v. Lopez*, 514 U.S. 549 (1995).

[59] *See, e.g., United States v. Morrison*, 529 U.S. 598 (2000); *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1995); *United States v. Lopez*, 514 U.S. 549 (1995).

[60] J. Harvie Wilkinson III, *The 2000 Justice Lester W. Roth Lecture: Federalism for the Future*, 74 S. CAL. L. REV. 523, 536 (2001).

among the line of federalism cases involves the Court's restriction of expansion of national power into traditional state law matters such as education, crime, family law and health issues, where abortion clearly falls. *Roe* is contrary to this line of cases arising after *Casey* and therefore has made *Roe* "obsolete."[61] The Court's application of *Lopez* federalism to *Roe* could not only properly return this traditional state law matter to the states, but it could also restore the democratic processes to this issue of great controversy, which has not been resolved as *Casey* hoped.[62]

In addition, there have been significant changes in the statutory law since *Roe*. Forty-six states are now willing to completely relieve the burden of childcare for "unwanted children" for all women. For example, in Texas, a woman can now simply leave an "unwanted" child at a hospital, clinic or emergency room within sixty days of birth with no questions asked and no threat of criminal prosecution.[63] Because of this new law, there is no longer a need to seek an abortion to avoid any "unwanted" burdens of motherhood. The effect is that Texas will help the mother and is willing to assume the responsibilities, financial and otherwise, of raising the child.

Since 1999 when Texas pioneered this legislation, forty-five other states have enacted similar legislation called "Baby Moses" or "safe haven" laws.[64] In addition,

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[61] In 1992, before the new Federalism decisions, the Court held: "No development of constitutional law since the case was decided has implicitly or explicitly left *Roe* behind as a mere survivor of obsolete constitutional thinking." *Casey*, 505 U.S. at 857.

[62] The Court unsuccessfully "call[ed] the contending sides to end their national division . . . " *Casey*, 505 U.S. at 867.

[63] TEX. FAM. CODE ANN. §§ 262.301-262.303, and § 262.105; TEX. PENAL CODE § 22.041(h).

[64] *See* ALA. CODE § 26-25-1 et seq. (2000); ARIZ. REV. STAT. § 13-3623.01 (2001); ARK. CODE ANN. § 9-34-202 (Michie 2001); CAL. HEALTH & SAFETY CODE § 1255.7 (Deering 2000); COLO. REV. STAT. § 19-3-304.5 (2000); CONN. GEN. STAT. § 17a-57 et seq. (2000); DEL. CODE ANN. tit. 16 § 907A (2001); FLA. STAT. ANN. § 383.50 et seq. (West 2000); GA. CODE ANN. § 19-10A-1 et seq. (2002); IDAHO CODE § 39-8201 et seq. (2001); § 383.50 ILL. COMP. STAT.

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Texas, along with other states, will pay for medical expenses associated with pregnancy for the needy. In *Roe,* this Court was concerned with imposing upon the mother "a distressful life and future . . . associated with the unwanted child."[65] Now, the mother can choose to be free of the burdens or blessings of raising a child without killing the child and without the subsequent damage to herself.

Similarly in *Casey,* this Court stated: "The destiny of the woman must be shaped to a large extent on her own conception of her spiritual imperatives and her place in society."[66] A woman's "destiny" can still be shaped by her own conception of her place in society because she can separate herself from

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2/1 et seq. (West 2001); IND. CODE ANN. § 31-34-2.5-1 et seq. (Michie 2000); IOWA CODE § 233.1 et seq. (2001); KAN. STAT. ANN. § 38-15,000 (2000); KY. REV. STAT. ANN. § 405.075 (Michie 2002); LA. CH. CODE art. 1701 et seq. (West 2000); ME. REV. STAT. ANN. tit. 17-A § 553 (West 2002); MD. CODE ANN. CTS. & JUD. PROC. § 5-641 (2002); MASS. GEN. LAWS ch. 119, § 391/2 (2004); MICH. COMP. LAWS § 750.135 (2000); MINN. STAT. § 145.902 (2000); MISS. CODE ANN. § 43-15-201 et seq. (2001); MO. REV. STAT. § 210.950 (2002); MONT. CODE ANN. § 40-6-401 et seq. (2001); NEV. REV. STAT. § 432B (2001); N.H. REV. STAT. ANN. § 132-A et seq. (2003); N.J. STAT. ANN. § 30:4C-15.5 et seq. (West 2000); N.M. STAT. ANN. §§ 24-22-2 et seq. and 30-6-1 (Michie 2001); N.Y. PENAL § 260.03; PENAL § 260.15; and, SOC. SERV. § 372-g (2000); N.C. GEN. STAT. § 7B-500 (2001); N.D. CENT. CODE § 50-25.1-15 (2001); OHIO REV. CODE ANN. § 2151.3515 et seq. (Anderson 2001); OKLA STAT. tit. 10 § 7115.1 (2001); OR. REV. STAT. § 418.017 (2001); PA. STAT. ANN. tit. 23 § 6501 et seq. (West 2002); R.I. GEN. LAWS § 23-13.1-1 et seq. (2001); S.C. CODE ANN. § 20-7-85 (Law. Co-op. 2000); S.D. CODIFIED LAWS § 25-5A-27 et seq. (Michie 2001); TENN. CODE ANN. § 68-11-255 (2001); TEX. FAM. CODE ANN. § 262.301 et seq. (West 1999); UTAH CODE ANN. § 62A-4a-801 et seq. (2001); VA. CODE ANN. § 18.2-371.1 (Michie 2003); WASH. REV. CODE § 13.34.260 (2002); W. VA. CODE § 49-6E-1 et seq. (2000); WIS. STAT. ANN. § 49.192 (West 2001); WYO. STAT. ANN. § 14-11-101 et seq. (Michie 2003).

[65] This Court stated that "... a distressful life and future ... Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it." *Roe*, 410 U.S. at 153.

[66] *Planned Parenthood v. Casey*, 505 U.S. 833, 852 (1992).

the child if he or she is still "unwanted" at birth, and for sixty days thereafter. She has the liberty to separate herself from the child without the guilt and shame that comes from the intentional killing of her child.[67] If her circumstances improve over time, she is free to reunite with her child, if she so desires, and the child has not yet been adopted. Her decision that she cannot care for the child is reversible, not irrevocable as with abortion. Her range of destiny shaping choices has expanded and her liberty is now greater.

In sum, if *Roe* were vacated, some states would allow abortion and some states would restrict abortions to some degree. This would more accurately reflect the democratic diversity of America, yet women would not be without alternatives.

D. The Underlying Assumptions in *Roe* and *Casey* Have Proven Unworkable in Practice.

Casey recognized that one of the reasons a case should be overruled is if it proves to be unworkable in practice.[68] The changed factual conditions go to the heart of *Roe*'s assumptions and support McCorvey's Rule 60 Motion because the judicial assumptions are not the reality of abortion practice today.

1. Abortion Practice Usually Does Not Involve a Normal Doctor-Patient Relationship Nor a Voluntary, Informed Private Decision Between a Woman and Her Doctor.

The real life experiences of the women who have had abortions and the individuals who have worked in abortion

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[67] *See, e.g.*, Shawn, " . . . constant (almost daily) thought about the tragic manner in which my baby was killed, and extreme guilt." App. at 77. *See also* App. at 82, 85, 89, 97, 106, 108, and 112, among many others.

[68] *Casey*, 505 U.S. at 854.

clinics since 1973 show that there is not usually a normal doctor-patient relationship and that the abortion industry does not adequately protect women.[69] As the Women's Affidavits demonstrate, most women never see their abortionist until the procedure is being performed.

At the heart of *Roe* is the assumption that the abortion decision should be between a woman and her doctor.[70] The sworn testimony of post-abortive women and personnel in abortion clinics shows that the abortion industry fails to (1) adequately provide women with the protections of a true doctor-patient relationship; (2) provide women with the information necessary to truly make an informed decision regarding the procedure; (3) maintain the normal standards of health, safety, and professionalism required of medical personnel; (4) protect the mental and physical safety of women; (5) fully and fairly inform patients about the nature of the abortion procedure, that it is a baby and not just a mass of cells, or at least, that they may come to believe it is a baby, and the consequences of having an abortion; and, (6) regularly misleads or deceives women regarding the nature and development of their unborn children.[71]

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[69] For example, M.E.A., "I was never told that I could be, and was in labor for 18 hours, delivered baby with no one present. Nurse came in room with doctor, umbilical cord was cut, baby placed in bucket on food tray cart in my room." (R. 017). Linda, "This is the horror of our generation – I believe that this abuse to women needs to be outlawed." (R. 384). *See, e.g.*, Motion, paragraph 26, App. at 181 and Affidavit of Norma McCorvey, App. at 31-42; Affidavits of more than one thousand Post-Abortive Women (R. 15-1410); Affidavit of Theresa Burke, Ph.D. (R. 1422-1667); Affidavit of David Reardon, Ph.D. (R. 1805-4307); Client Intake Records for Pregnancy Care Centers (R. 4308-5188); Affidavit of Carol Everett, former abortion provider (R. 5189-5196).

[70] "All these are factors the woman and her responsible physician necessarily will consider in consultation." *Roe*, 410 U.S. at 153.

[71] Women were also asked, "Were you adequately informed of the nature of abortion?" Typical responses demonstrate that they were not. *See, e.g.*, Paula, "I was not told about the years of emotional torment I would experience." (R. 84). Tina, "No, I was not told anything about abortion. . . . No one told me of the risks I was taking." (R. 159). *See also* Affidavit of Norma McCorvey, App. at 31-42; the Affidavits of more than 1,000

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2. Abortion Is Often the Result of Coercion from Relatives, Sexual Partners, or Circumstances.

Roe is not workable because of other practical flaws that go to the heart of the liberty interest. For example, women are frequently coerced. The Supreme Court in *Roe* and *Casey* assumed that abortion would be a voluntary choice. Rather than being the result of a knowing, voluntary, dignity-enhancing woman's choice, the Women's Affidavits reveal that abortion is almost always the result of pressure or coercion from sexual partners, family members, abortion clinic workers or abortionists, or circumstances.[72] Many women testify that they would have never considered an abortion, if it were not legal. The "abortion choice" gave freedom to others to pressure them into something they did not want and later deeply regretted.[73]

3. Women Are Left Alone to Deal with the Problem of Perceived Guilt.

In addition, there is no true liberty for women because guilt is another consequence of abortion. There are three

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Post-Abortive Women (R. 15-1410); the Affidavit of Theresa Burke, Ph.D. (R. 1422-1667); the Affidavit of David Reardon, Ph.D. (R. 1668-1804), Exhibits to Affidavit of David Reardon, Ph.D. (R. 1805-4307); the Client Intake Records From Pregnancy Care Centers (R. 4308-5188); the Affidavit of Carol Everett, former abortion clinic worker (R. 5189-5196). Women were also asked: "Were you adequately informed of the consequences of abortion?" Typical responses demonstrate that they were not. *See, e.g.*, R. 27, 35, 37, 58, 88, 102, 125, and 133 among many others.

[72] Women's Affidavits show pressure or coercion when asked, "Did anyone pressure you into having an abortion? *See, e.g.*, Jennifer, "Yes, my family and the counselor at the clinic." (R. 584). Janet, "Yes. Mostly my parents but also my then boyfriend." (R. 641). Cori Elizabeth, "Yes, my fiancé at the time." (R. 780). *See also* R. 315, 328, 373, 393, and 410 among many others.

[73] For example, Janice, "Because of the fear I lived under perpetrated by my ex-husband, I chose to have the abortion to avoid any more of his wrath and terror . . . it has affected me emotionally to this day." App. at 83.

typical responses to guilt: punishment, even self-punishment, forgiveness, and denial. Denial is a psychological coping mechanism, which can be effective in the short-run, but eventually leads to problems.[74] Whatever the legal status of the "fetus," "millions of Americans believe that life begins at conception. . . . "[75] Thus, many women who have abortions feel or will feel guilt about the procedure at some point in their life, often years later. The Supreme Court has never dealt with this perceived guilt issue. The Court cannot assure a woman she has not killed her baby since the Court even today has not "resolve[d] the difficult question of when life begins."[76]

If even a conservative ten percent of women suffer severe psychological injury at some point in their life, then at least 100,000 women a year could suffer needless trauma, especially now that society will care for unwanted children. Petitioner's evidence demonstrates the figure is much, much higher. While the initial reaction to an abortion may be relief for some, though certainly not all, this relief is due to the end of a very tragic, pressure-packed, emotionally-conflicted situation. Merely making the decision sometimes produces some temporary relief, but the evidence now shows the relief is not long-lasting for millions of women. Because of *Roe* and *Casey*, normal social controls and investigations, experiments, and consumer protection cannot occur. If a procedure this Court once thought beneficial is in fact dangerous, this Court should at least look at the evidence, or order a remand for a trial.

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[74] *See* Dr. Burke's Affidavit which "explains some of the human defense mechanisms [post-abortive] women experience in various ways such as suppression, repression, rationalization, reaction formation, introjection, undoing, projection, provocative behavior, displacement, conversion, withdrawal, regression, deflection, and denial." Rule 32 Filing Letter, App. at 206.

[75] *Stenberg v. Carhart*, 530 U.S. 914, 920 (2000); *see also* Women's Affidavits.

[76] *Roe*, 410 U.S. at 159.

III. THE COURTS BELOW ERRED IN DENYING PETITIONER DUE PROCESS AND ABUSED THEIR DISCRETION.

A. Petitioner Has Met All Procedural Requirements.

The courts below erred in denying Petitioner's Rule 60 Motion on procedural grounds, which will result in untold further injuries to women. Petitioner has met all procedural requirements.[77] At the time *Roe* was originally decided, all of the procedural requirements had been met. No independent jurisdiction is needed to support a Rule 60(b) Motion because the district court has continuing jurisdiction.[78] By the plain language of Rule 60(b),[79] Petitioner has standing to bring this Motion because she was a party to the "final judgment, order, or proceeding . . . "[80] The courts have followed this plain reading of the Rule.[81] There is no question that Norma McCorvey was and is a party, and

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[77] Petitioner addressed in her Brief to the Court of Appeals for the Fifth Circuit the procedural issues of standing, mootness, judicial estoppel, *stare decisis*, and binding precedent in greater detail. She continues to assert that all procedural requirements have been met and that no independent jurisdiction is needed to support a Rule 60(b) Motion.

[78] *Charter Township of Muskegon v. City of Muskegon*, 303 F.3d 755, 762 (6th Cir. 2002) (*quoting* MOORE'S FEDERAL PRACTICE § 60.84[1][a] (3d ed. 1997) that "It has been long established that no independent federal jurisdictional basis is needed to support a Rule 60(b) motion proceeding. A Rule 60(b) motion is considered a continuation of the original proceeding. "If the district court had jurisdiction when the suit was filed, it has jurisdiction to entertain a Rule 60(b) motion. This jurisdiction is not divested by subsequent events.").

[79] FED. R. CIV. P. 60(b) states: "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding. . . . "

[80] FED. R. CIV. P 60(b).

[81] *See National Acceptance Co. v. Frigidmeats*, 627 F.2d 764, 766 (7th Cir. 1980). *See generally* 11 Charles Alan Wright, Arthur R. Miller, et al., FEDERAL PRACTICE AND PROCEDURE "Jurisdiction" § 2865 at 225-226 (West 1973) (stating it is well-settled that one who was not a party lacks standing to bring a Rule 60(b) motion).

therefore, she has met all procedural requirements for a Rule 60 Motion.

B. The Rule 60 Motion Was Denied After a Mere Two Days Without Careful Consideration of the 5,347 Pages of Sworn Evidence Submitted with the Motion.

The United States Court of Appeals for the Fifth Circuit has criticized district courts that fail to hold post-judgment hearings and carefully consider each motion on its merits.[82] Recently, the court admonished the lower courts to "*carefully consider each such motion on its merits. . . .*"[83] In the present case, the district court ignored the court of appeal's directive for careful consideration. The district court candidly admitted that it denied "McCorvey's motion for relief from judgment without considering the substance of her criticism of *Roe*." App. at 17-18.

In addition, the district court ruled on this unusual case of national importance in a mere two days without giving careful consideration to 5,347 pages of affidavit evidence. This rapidity does not suggest even the appearance of impartiality and a due regard for justice.

The appellate panel correctly held that the district court erred in denying the Rule 60 Motion based on timeliness. The panel stated: "Essentially, the district court concluded that a 30-year delay, regardless of the circumstances, is too long as a matter of law. We disagree."[84] The panel correctly reasoned that there is not a set period of time but that the motion must be brought within a reasonable time based on the particular facts and circumstances.[85] However, the panel erred in its decision

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[82] *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 494 (5th Cir. 2000).

[83] *Id.* at 502 (emphasis added).

[84] Panel Opinion, App. at 6.

[85] *Id. See* Petitioner's Motion For Reconsideration for detailed timeliness analysis. App. at 213-243. Federal courts have allowed relief decades after judgment under a Rule 60 Motion. *See, e.g., Agostini v. Felton*, 521 U.S. 203 (1997) (12 years); *Rufo v. Inmates of the Suffolk*

(Continued on following page)

on mootness because Texas has consistently banned or restricted abortion to the full extent allowed by the Court.

C. By Ignoring the Clear Intent of Texas Abortion Law to Protect Women and Children to the Full Extent of the Constitution, the Decision Below Constitutes Blatant Federal Court Nullification of State Abortion Law.

In *Leavitt v. Jane L.*,[86] this Court summarily reversed the court of appeals' interpretation of state abortion law, explaining that while the Court normally does not "grant petitions for certiorari solely to review what purports to be an application of state law;" it did so and should do so "where the alternative is allowing blatant federal court nullification of state law."[87] As the Petitioner's mootness argument will show, it is clear even to the leading pro-abortion advocacy group, that Texas would ban abortion except to save the life of the mother if it could.[88] What stops Texas is not its own legislative intent, as the panel below incorrectly opined, but the judgment in *Roe v. Wade* itself. Of course, if this Court gave each state the opportunity to do so, each state could decide to what extent, if at all, they would regulate or ban abortion.

County Jail, 502 U.S. 367 (1992) (10 years); *Railway Employees v. Wright*, 364 U.S. 642 (1961) (12 years); *Charter Township of Muskegon v. City of Muskegon*, 303 F.3d 755 (6th Cir. 2002) (28 years); *United States v. Board of School Commissioners*, 128 F.3d 507 (7th Cir. 1997) (30 years); *NAACP v. Duval County School*, 273 F.3d 960 (11th Cir. 2001) (41 years).

[86] *Leavitt v. Jane L.*, 518 U.S. 137, 144-145 (1996).

[87] *Id.*

[88] "Given the current composition of the [Texas] legislature and the State's history of regulating abortion heavily, it is likely that Texas would enact a new statute banning abortion." Center for Reproductive Rights, *What If Roe Fell? The State-by-State Consequences of Overturning Roe v. Wade* 78 (Sept. 2004) Attached to supplemental briefing letter with Fifth Circuit. App. at 270-275.

D. The Case Is Not Moot.

The panel held that "because the statutes declared unconstitutional in *Roe* have been repealed, McCorvey's 60(b) motion is moot."[89] McCorvey submits that the Texas abortion statutes have not been repealed expressly or by implication.

After *Roe,* the Penal Code was revised, but the abortion provisions were expressly *not* repealed. The Disposition Table made it clear that certain articles were *unrepealed* even though they were placed into a different part of the new Code.[90] The historical note states they are unconstitutional because of *Roe v. Wade*. Thus, contrary to the Court of Appeals, the Legislature has directly stated that the abortion articles are unrepealed.

In 1974, the Attorney General outlined the types of regulations permitted under *Roe*.[91] He said that "sponsors . . . should be guided by the principles discussed herein. . . . "[92] Subsequently, the Texas Legislature passed legislation restricting abortion as much as possible based on the constitutional limitations of *Roe v. Wade* and the Attorney General's guidelines after the decision.

It is not reasonable to assume that the Legislature would repeal by implication what it expressly refused to

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[89] Panel Opinion, App. at 6. *See also* Petition For Rehearing En Banc for more complete mootness discussion. App. at 244-269.

[90] In fact, the Table was entitled "Disposition of **Unrepealed** Articles of the Texas Penal Code of 1925 and Vernon's Texas Penal Code." (emphasis added) The instructions for that Disposition Table stated the Legislature was giving new official citations of unrepealed articles. The instructions for the Disposition Table stated in relevant part: "Pursuant to the authority granted by Section 5 of Chapter 399, Acts of the 63rd Legislature, the Texas Legislative Council has compiled the following table showing the new official citations of **unrepealed** articles of the 1925 Texas Penal Code and the new classifications of unrepealed statutes compiled as articles of Vernon's Texas Penal Code." (emphasis added)

[91] OP. TEX. ATT'Y GEN. No. H-369 at 4-13 (1974).

[92] *Id.* at 13.

repeal. More logical is the interpretation that the Legislature has followed the guidelines of the Attorney General since 1974 in regulating abortion and providing administrative, civil, and criminal penalties to the full extent of the Supreme Court's new cases interpreting the Constitution.[93] One author criticizing the Fifth Circuit's approach stated: "[T]hey [post-*Roe* statutes] should generally be viewed as measures intended to fill a gap created by *Roe* rather than as impliedly repealing pre-*Roe* legislation."[94]

This Court "weighs in favor of revival."[95] Several state courts have explicitly addressed revival, and with one exception, they have concluded that invalidated statutes are immediately enforceable when the invalidating decision is overturned.[96] Prior to the overruling decision, an invalidated statute "is dormant, but not dead."[97] One court has stated:

> There are comparatively few cases dealing squarely with the question before us, but they are unanimous in holding that a law once declared unconstitutional and later held to be constitutional does not require reenactment by the legislature in order to restore its operative force. They proceed on the principle that a statute declared

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[93] Texas regulates abortion in many ways, as correctly noted below. App. at 5. These provisions show a desire to allow abortions only to the absolute minimum as required by *Roe* and its progeny.

[94] *See generally* Smolin, *The Status of Existing Abortion Prohibitions in a Legal World Without Roe: Applying the Doctrine of Implied Repeal to Abortion*, 11 ST. LOUIS U. PUB. L. REV. 385, 402 (1992) (stating overwhelming consensus is that statutes automatically revive).

[95] Treanor & Sperling, *Prospective Overruling and the Revival of "Unconstitutional" Statutes*, 93 COLUM. L. REV. 1902, 1911 (1993); *see also* Benjamin, *Stepping into the Same River Twice: Rapidly Changing Facts and the Appellate Process*, 78 TEX. L. REV. 269, n.63 (1999) ("an invalidated statute simply becomes dormant, ready to be enforced as soon as a court finds that it is no longer invalid").

[96] Treanor & Sperling, *Prospective Overruling and the Revival of "Unconstitutional" Statutes*, 93 COLUM. L. REV. 1902, 1913-1914 n.50 (citations omitted).

[97] *Jawish v. Morlet*, 86 A.2d 96, 97 (D.C. 1952).

> unconstitutional is void in the sense that it is inoperative or unenforceable, but not void in the sense that it is repealed or abolished; that so long as the decision stands the statute is dormant but not dead; and that if the decision is reversed the statute is valid from its first effective date. (citations omitted).[98]

By statute, Texas presumes that the intention of its Legislature is to be in "compliance with the constitutions of this state and the United States . . . "[99] and that "a just and reasonable result is intended."[100] If *Roe* is vacated on the grounds that it is no longer just, the just result would be to revive the dormant Texas law, not penalize Texas for following this Court.

There is no irreconcilable conflict between the older and new statutes. The dormant "pre-*Roe*" statutes allowed abortions to save the life of the mother.[101] If *Roe* is vacated, allowable abortions to save the life of the mother under the "revived" statutes would still be governed by the newer statutes which are silent on the purpose for abortions.[102]

The repeal of a statutory provision by implication will not be declared unless the legislative intent to repeal is so clear and apparent as to leave no room for either doubt or

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[98] *Id.*; *see also* 39 OP. ATT'Y GEN. 22 (1937) (stating unconstitutional statute remains on the "statute books" and is valid from the date it became effective).

[99] TEX. GOV'T CODE § 311.021.

[100] *Id.* § 311.021(3).

[101] Penal Code art. 1196 stating: "Nothing in this chapter applies to an abortion procured or attempted by medical advice for the purpose of saving the life of the mother." TEX. PENAL CODE art. 1196 (1925), App. at 29.

[102] Unlike the statute in *Weeks v. Connick*, 733 F. Supp. 1036 (E.D. La. 1990), Texas had an exception to save the life of the mother. *Weeks* which was cited by the panel below has been criticized for its flawed analysis. *See generally* Smolin, *The Status of Existing Abortion Prohibitions in a Legal World Without Roe: Applying the Doctrine of Implied Repeal to Abortion*, 11 ST. LOUIS U. PUB. L. REV. 385 (1992).

speculation.[103] Here, the Legislature is responding to what the Supreme Court has done, and not to what the Legislature itself has done in prior sessions. This is a significant difference.

There are several exceptions to the mootness doctrine. The panel itself noted an exception to mootness applies "where there is evidence, or a legitimate reason to believe, that the state will reenact the statute or one that is substantially similar."[104] Yet the panel ignored all the subsequent legislation Texas adopted whenever subsequent Supreme Court interpretations allowed restrictions.[105]

Petitioner McCorvey further contends that the case is not moot because it comes within other exceptions to the mootness rule. The first exception is "capable of repetition, yet evading review." This Court specifically addressed this issue in the original *Roe* case.[106] In 1973, McCorvey's case was arguably moot because she was no longer pregnant.[107] This Court rejected the argument stating "pregnancy provides a classic justification for a conclusion of nonmootness" and "capable of repetition, yet evading review."[108] Harm to pregnant women from abortion injuries is similar. Judge Jones and Petitioner believe that unless the Court uses its own *Roe* exception to the mootness doctrine, as it did in this case originally to reach this important social issue, "the Court will never be able to examine its factual assumptions on a record made in Court . . . No 'live'

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[103] *Samaniego v. Arguelles*, 737 S.W.2d 88, 89 (Tex. App. – El Paso 1987); *see also Allen v. Mauro*, 733 S.W.2d 228, 234 (Tex. App. – El Paso 1984).

[104] Panel Opinion, App. at 5, n.3.

[105] *See also* note 88.

[106] *Roe*, 410 U.S. at 125.

[107] *Id.* at 124.

[108] *Id.* at 125.

controversy will arise concerning this framework, consequently I cannot conceive of any judicial forum in which McCorvey's evidence could be aired."[109] Thus, substantial changes in factual and legal conditions would evade review, contrary to *Roe*'s mootness exception previously established in this case. In essence, such a ruling also completely undermines Rule 60.[110]

The second exception to mootness is "voluntary cessation of the challenged practice."[111] The holding in *Roe* is a continuing quasi-injunctive order. In *Roe*, this Court did not grant injunctive relief because the decision would and did have the same effect as an injunction. The Court said "[w]e assume the Texas prosecutorial authorities will give full credence to this decision that the present criminal abortion statutes are unconstitutional."[112] Prosecutors in the State of Texas have since respectfully, and voluntarily, given credence to this Court's decision. Prosecutors could change their mind and prosecute abortionists. The only way to get relief from a quasi-injunctive order is Rule 60 relief, and therefore, McCorvey's Rule 60 Motion is not moot.

The third exception to mootness is collateral consequences.[113] "[I]f there are collateral consequences to one of the parties – even if they are quite minor – the controversy is not moot."[114] As McCorvey has proved, there are tremendous collateral consequences. McCorvey has suffered guilt, shame, public humiliation, anguish of soul, and what she believes is complicity in murder knowing that her case has

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[109] Panel Opinion (Jones, J., concurring opinion). App. at 11.

[110] *See Agostini v. Felton*, 521 U.S. 203 (1997).

[111] *See* John E. Nowak & Ronald D. Rotunda, CONSTITUTIONAL LAW § 2.12 at 72 (7th ed. 2004).

[112] *Roe v. Wade*, 410 U.S. 113, 166 (1973).

[113] *See* John E. Nowak & Ronald D. Rotunda, CONSTITUTIONAL LAW § 2.12 at 74 (7th ed. 2004).

[114] *Id.* at 75.

caused the death of over 43 million babies.[115] She has also shared in the pain of post-abortive women. The State of Texas has suffered the consequences of not being able to ban abortion except to save the life of the mother, which it had done since 1854. The women have suffered collateral consequences of *Roe* through physical, emotional, and psychological harm. The nation has suffered the collateral consequences – as *Roe* has polarized Americans, influenced the political process and even the appointment of judges. Justice never sleeps, and it demands re-evaluation in light of changed conditions. Therefore, McCorvey's Rule 60 Motion is not moot.

CONCLUSION

This a case of national importance that can only be decided by this Court. As one of the post-abortive women testified, "Listen to the voices of those who have experienced the physical and emotional consequences."[116] Because it goes to the heart of the balance struck in *Roe* and involves substantial changes in the factual and legal conditions since 1973 that make *Roe* no longer just or equitable for prospective application, the petition for writ of certiorari should be granted.

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[115] *See* Affidavit of Norma McCorvey, App. at 31-42; *see also* Affidavit of Sandra Cano, "Doe" of *Doe v. Bolton*, attached as Exhibit E to original Rule 60 Motion.

[116] Shirley (R. 89).

Respectfully submitted,

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APPENDIX

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REVISED SEPTEMBER 17, 2004

United States Court of Appeals
for the Fifth Circuit

No. 03-10711

NORMA McCORVEY, FORMERLY KNOWN AS JANE ROE,

Plaintiff-Appellant,

versus

BILL HILL, DALLAS COUNTY DISTRICT ATTORNEY,

Defendant-Appellee.

Appeal from the United States District Court
For the Northern District of Texas

(Filed September 14, 2004)

Before JONES, WIENER, and PRADO, Circuit Judges.

EDITH H. JONES, Circuit Judge:

This case arises from the district court's denial of McCorvey's motion for relief from judgment pursuant to Fed. Rule Civ. Proc. 60(b). For the reasons set forth below, we dismiss.

BACKGROUND

Norma McCorvey filed a Rule 60(b) motion for relief from judgment in which she sought to have the district court revisit the Supreme Court's decision in *Roe v. Wade,* 410 U.S. 113, 93 S. Ct. 705, 35 L.Ed. 2d 147 (1973).

McCorvey, her identity then protected as "Jane Roe," was the named appellant in *Roe*. The district court denied McCorvey's motion after concluding that it was not filed within a reasonable time after final judgment was entered.[1]

DISCUSSION

We review the district court's denial of relief under Rule 60(b) for abuse of discretion. *See Halicki v. Louisiana Casino Cruises, Inc.*, 151 F.3d 465, 470 (5th Cir. 1998); *Flowers v. S. Reg'l Physician Servs., Inc.*, 286 F.3d 798, 800 (5th Cir. 2002). The district court's denial of an evidentiary hearing is also subject to abuse of discretion review. *See Wichita Falls Office Assocs. v. Banc One Corp.*, 978 F.2d 915, 918 (5th Cir. 1992).

On appeal, McCorvey: (1) asserts that the district court improperly refused to convene a three-judge court; (2) challenges the district court's ruling on her Rule 60(b) motion; and (3) contends that she was entitled to an evidentiary hearing on her Rule 60(b) motion. We address each issue in turn.

A. Three-Judge Panel

Roe v. Wade proceeded before a three-judge district court empaneled pursuant to 28 U.S.C. § 2281. *See* 28 U.S.C. § 2281 (1970); 28 U.S.C. § 2284 (1970) (controlling

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[1] We dispensed with oral argument in this case because the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument. FED. R. APP. P. 34(a)(2).

the composition and procedure of three-judge district courts). Before its repeal,[2] § 2281 required a three-judge district court to hear and determine cases involving injunctions against the enforcement of state statutes based on allegations of unconstitutionality. *See Corpus v. Estelle*, 551 F.2d 68, 70 (5th Cir. 1977). McCorvey asserts that the single district court judge, who ruled on her Rule 60(b) motion, acted without authority. We disagree.

Although the original action was tried by a three-judge district court, the Rule 60(b) motion filed by McCorvey in 2003 was not properly a matter for a three-judge court. In *United States v. Louisiana,* 9 F.3d 1159, 1171 (5th Cir. 1993), this court ruled, in another action determined under § 2281 by a three-judge court, that a single district court judge, acting alone after the repeal of § 2281, could properly entertain and decide subsequent modified remedial orders. The instant context is no different: A single district court judge can decide threshold questions relating to McCorvey's Rule 60(b) motion even though the underlying judgment was originally tried by a three-judge court under the former § 2281. *See, e.g., Bond v. White*, 508 F.2d 1397, 1400-01 (5th Cir. 1975).

B. Rule 60(b)

McCorvey argues that the district court abused its discretion in rejecting her Rule 60(b) motion for relief from judgment as untimely. A question necessarily antecedent to McCorvey's substantive claim, however, is whether she has presented a justiciable case or controversy pursuant to

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[2] PUB. L. 94-391, AUG. 12, 1976, 90 STAT. 1119.

Article III of the Constitution. We are under an independent obligation to examine this jurisdictional question.

There are two conceivable bases for concluding that McCorvey does not present a live case or controversy – lack of standing and mootness. As the Supreme Court explained in *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 180, 120 S. Ct. 693, 704, 145 L.Ed. 2d 610 (2000), standing and mootness are related, but distinct, concepts. We may pretermit the question of standing if we find a case clearly moot. *See, e.g., Nomi v. Regents of Univ. of Minn.*, 5 F.3d 332, 334 (8th Cir. 1993).

The mootness doctrine "ensures that the litigant's interest in the outcome continues to exist throughout the life of the lawsuit . . . including the pendency of the appeal." *Cook v. Colgate*, 992 F.2d 17, 19 (2d Cir. 1993) (citing *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 395, 100 S. Ct. 1202, 1209 (1980)) (other citations omitted); *see also Rocky v. King*, 900 F.2d 864, 866 (5th Cir. 1990) (controversy must remain "live" throughout the litigation process). Mootness is the fatal issue for McCorvey.

"In general, a matter is moot for Article III purposes if the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Sierra Club v. Glickman*, 156 F.3d 606, 619 (5th Cir. 1998). Suits regarding the constitutionality of statutes become moot once the statute is repealed. *See Diffenderfer v. Cent. Baptist Church*, 404 U.S. 412, 414-15, 92 S. Ct. 574, 575-76 (1972); *see also Fed'n of Adver. Indus. Executives, Inc. v. City of Chicago*, 326 F.3d 924, 930 (7th Cir. 2003) ("[W]e, along with all the circuits to address the issue, have interpreted

Supreme Court precedent to support the rule that repeal of a contested ordinance moots a plaintiff's injunction request, absent evidence that the City plans to or already has reenacted the challenged law or one substantially similar."); *Weeks v. Connick*, 733 F. Supp. 1036, 1037 (E.D. La. 1990).[3]

Under Texas law, statutes may be repealed expressly or by implication. *See Gordon v. Lake*, 356 S.W.2d 138, 139 (Tex. 1962). The Texas statutes that criminalized abortion (former Penal Code Articles 1191, 1192, 1193, 1194 and 1196) and were at issue in *Roe* have, at least, been repealed by implication. Currently, Texas regulates abortion in a number of ways. For example, a comprehensive set of civil regulations governs the availability of abortions for minors. *See* TEX. FAM. CODE §§ 33.002-011 (2000). Texas also regulates the practices and procedures of abortion clinics through its Public Health and Safety Code. *See* TEX. HEALTH & SAFETY CODE §§ 245.001-022; *see also Women's Med. Center of Northwest Houston v. Bell*, 248 F.3d 411, 414-16 (5th Cir. 2001) (discussing various portions of the Texas Abortion Facility License and Reporting Act). Furthermore, Texas regulates the availability of state-funded abortions. *See* 25 TEX. ADMIN. CODE § 29.1121

[3] As noted above, an exception to this mootness rule exists where there is evidence, or a legitimate reason to believe, that the state will reenact the statute or one that is substantially similar. *See City of Mesquite v. Aladdin's Castle*, 455 U.S. 283, 289, 102 S. Ct. 1070, 1075 (1982); *Northeastern Florida Chapter of Associated Gen. Contractors*, 508 U.S. 655, 662, 113 S. Ct. 2297, 2301 (1993). This exception does not apply to the instant case. Texas has not adopted any substantially similar statute, nor is there a reasonable belief that it plans to reenact the statutory provisions struck down in *Roe*.

(2002); *see also Bell v. Low Income Women of Tex.*, 95 S.W.3d 253, 256 (Tex. 2002).

These regulatory provisions cannot be harmonized with provisions that purport to criminalize abortion. There is no way to enforce both sets of laws; the current regulations are intended to form a comprehensive scheme – not an addendum to the criminal statutes struck down in *Roe*. As the court stated in *Weeks*, a strikingly similar case, "it is clearly inconsistent to provide in one statute that abortions are permissible if set guidelines are followed and in another provide that abortions are criminally prohibited." 733 F. Supp. at 1038. Thus, because the statutes declared unconstitutional in *Roe* have been repealed, McCorvey's 60(b) motion is moot.[4]

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[4] The district court did not resolve the case on mootness grounds. Rather, the district court held that "McCorvey's 30-year delay is of such a great magnitude that her motion was not made within a reasonable time due to the length of time alone." Essentially, the district court concluded that a 30-year delay, regardless of the circumstances, is too long as a matter of law. We disagree. Rule 60(b)(5) and (b)(6) do not require the motion for relief from judgment be brought within a limited period of time. Instead, these provisions require only that the motion "be made within a reasonable time[.]" Fed. R. Civ. P. 60(b). Therefore, "[w]hat constitutes a reasonable time under Rule 60(b) depends on the particular facts of the case in question." *Fed. Land Bank of St. Louis v. Cupples Bros.*, 889 F.2d 764 (8th Cir. 1989); *United States v. Wyle*, 889 F.2d 242, 249 (9th Cir. 1989) ("What constitutes a reasonable time depends on the facts of each case.") (citation and quotation omitted); *Holland v. Virginia Lee Co., Inc.*, 188 F.R.D. 241, 248 (W.D. Va. 1999) ([T]here is no set time period distinguishing timely from untimely motions outside of the absolute, one-year time frame for Rule 60(b)(1)-(3) motions."). Accordingly, the district court erred in initially determining that the 30-year delay was "unreasonable" without examining the facts and circumstances of this particular case. The district court did hold, in the alternative, that the 30-year delay was "unreasonable" under the "facts and circumstances" of the case. However, we need not

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C. Evidentiary Hearing

Finally, the district court did not abuse its discretion in denying McCorvey's request for an evidentiary hearing. *See Moran v. Kingdom of Saudi Arabia*, 27 F.3d 169, 171 (5th Cir. 1994) (denial of evidentiary hearing affirmed where court had written evidence sufficient to make its decision). An evidentiary hearing would have served no useful purpose in aid of the court's analysis of the threshold questions presented, which, as we explained, precluded the relief McCorvey sought.

CONCLUSION

For these reasons, rather than those articulated by the district court, the appeal from the district court's denial of McCorvey's Rule 60(b) motion for relief from judgment is **DISMISSED.**

EDITH H. JONES, Circuit Judge, concurring:

I agree that Ms. McCorvey's Rule 60(b) case is now moot. A judicial decision in her favor cannot turn back Texas's legislative clock to reinstate the laws, no longer effective, that formerly criminalized abortion.

It is ironic that the doctrine of mootness bars further litigation of this case. Mootness confines the judicial branch to its appropriate constitutional role of deciding actual, live cases or controversies. Yet this case was born

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reach that issue, which would require a substantive critique of McCorvey's claims, in light of our resolution of the matter on mootness grounds.

in an exception to mootness[5] and brought forth, instead of a confined decision, an "exercise of raw judicial power." *Doe v. Bolton,* 410 U.S. 179, 222; 93 S. Ct. 762, 763, 35 L.Ed.2d 739 (White, J., dissenting) (1973). Even more ironic is that although mootness dictates that Ms. McCorvey has no "live" legal controversy, the serious and substantial evidence she offered could have generated an important debate over factual premises that underlay *Roe.*

McCorvey presented evidence that goes to the heart of the balance *Roe* struck between the choice of a mother and the life of her unborn child. First, there are about a thousand affidavits of women who have had abortions and claim to have suffered long-term emotional damage and impaired relationships from their decision.[6] Studies by scientists, offered by McCorvey, suggest that women may be affected emotionally and physically for years afterward and may be more prone to engage in high-risk, self-destructive conduct as a result of having had abortions.[7]

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[5] *See Roe v. Wade,* 410 U.S. 113, 125; 93 S. Ct. 705, 713; 35 L.Ed.2d 147 (1973) ("Pregnancy provides a classic justification for a conclusion of nonmootness. It truly could be 'capable of repetition, yet evading review'.") (citations omitted).

[6] R. at 15-1410, Affidavits of More Than One Thousand Post-Abortive Women.

[7] *See* R. at 1669-1718, Affidavit of David Reardon, Ph.D. (reporting on clinical and scientific findings demonstrating that abortion is linked to emotional, physical, and psychological problems in women and criticizing the studies relied on by the *Roe* Court). *See also* C. A. Barnard, *The Long-Term Psychosocial Effects of Abortion* (Portsmouth, NH: Institute for Pregnancy Loss, 1990); W. Franz & D. Reardon, *Differential Impact of Abortion on Adolescents and Adults,* 27(105) Adolescence 161-72 (1992); M. Gissler, et al., *Suicides after pregnancy in Finland: 1987-94: register linkage study,* BMJ, 313:1431-4 (1996); B. Lask; J. Lydon, et al., *Pregnancy Decision Making as a Significant Life Event: A Commitment Approach,* 71(1) Journal of Personality and

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Second, *Roe's* assumption that the decision to abort a baby will be made in close consultation with a woman's private physician is called into question by affidavits from workers at abortion clinics, where most abortions are now performed. According to the affidavits, women are often herded through their procedures with little or no medical or emotional counseling.[8] Third, McCorvey contends that

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Social Psychology, 141-51 (1996); B. Major & C. Cozzarelli, *Psychosocial Predictors of Adjustment to Abortion*, 48(3) Journal of Social *Issues*, 48(3) 121-42 (1992); W. B. Miller, *An Empirical Study of the Psychological Antecedents and Consequences of Induced Abortion*, 48(3) Journal of Social Issues 67-93 (1992); W. B. Miller, *Testing a Model of the Psychological Consequences of Abortion*, The New Civil War: The Psychology, Culture, and Politics of Abortion, (American Psychological Assoc., Linda J. Beckman & S. Maria Harvey, eds. Washington, DC, 1998); H. Söderberg, et al., *Emotional distress following induced abortion: A Study of incidence and determinants among abortees in Malmö Sweden*, 79 Eur. J. Obstet. Gynecol. Reprod. Biol. 173-78 (1998); H. P. Vaughan, *Canonical Variates of Post Abortion Syndrome* (Portsmouth, NH: Institute for Pregnancy Loss, 1990); Gail B. Williams, *Induced Elective Abortion and Pre-natal Grief* (cited by Reardon).

[8] *See, e.g.*, R. at 1721-57, Affidavit of David Reardon, Ph.D. (reporting, based on numerous studies, investigations and interviews, that women visiting abortion clinics receive little to no counseling (and what counseling is received is heavily biased in favor of having an abortion), are rushed through the process, and exposed – without sufficient warning – to health risks ranging from unsanitary clinic conditions to physical and psychological damage); R. at 1668-1804, Exhibits to Affidavit of David Reardon, Ph.D. (studies, full interviews, and other analysis supporting conclusions); R. 4308-5188 Client Intake Records from Pregnancy Care Centers (cataloging the emotional, physical, and psychological symptoms felt by hundreds of women after having an abortion who then sought post-abortion counseling); R. at 5189-96 Affidavit of Carol Everett (written testimony of a former abortion clinic worker, reporting that, in her clinic, both abortion counselors and physicians worked on commission and aggressively followed a script to encourage prompt election of the procedure – even when the patient was not pregnant; that physicians usually performed 10 to 12 abortions per hour; that the clinic transported women to hospitals secretly by car when complications arose (to avoid bad

(Continued on following page)

the sociological landscape surrounding unwed motherhood has changed dramatically since *Roe* was decided. No longer does the unwed mother face social ostracism, and government programs offer medical care, social services, and even, through "Baby Moses" laws in over three-quarters of the states, the option of leaving a newborn directly in the care of the state until it can be adopted.[9] Finally, neonatal and medical science, summarized by McCorvey, now graphically portrays, as science was unable to do 31 years ago, how a baby develops sensitivity to

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publicity); and that she saw one woman die and 19 others permanently maimed by abortion procedures); R. at 10, Affidavit of Norma McCorvey (describing abortion facilities based upon her work experience in clinics).

[9] *See* Ala. Code § 26-25-1 *et seq.* (2000); Ariz. Rev. Stat. § 13-3623.01 (2001); Ark. Code Ann. § 9-34-202 (Michie 2001); Cal. Health & Safety Code § 1255.7 (Deering 2000); Colo. Rev. Stat. § 19-3-304.5 (2000); Conn. Gen. Stat. § 17a-57 *et seq.* (2000); Del. Code Ann. tit. 16 § 907a (2001); Fla. Stat. Ann. § 383.50 *et seq. (West* 2000); Ga. Code Ann. § 19-10a-1 *et seq.* (2002); Idaho Code § 39-8201 *et seq.* (2001); § 325 Ill. Comp. Stat. 2/1 *et seq.* (West 2001); Ind. Code § 31-34-2.5-1 *et seq.* (Michie 2000); Iowa Code § 233.1 *et seq.* (2001); Kan. Stat. Ann. § 38-15,100 (2000); Ky. Rev. Stat. Ann. § 405.075 (2002); La. Ch. Code Art. 1151 (West 2000); Me. Rev. Stat. Ann. tit. 17-A § 553 (2002); Md. Code Ann. Cts. & Jud. Proc. § 5-641 (2002); Mich. Comp. Laws § 750.135 (2000); Minn. Stat. § 145.902 (2000); Miss. Code Ann. § 43-15-201 *et seq.* (2001); Mo. Rev. Stat. § 210.950 (2002); Mont. Code Ann. § 40-6-401 *et seq.* (2001); N.Y. Penal § 260.03; Penal § 260.15; and, Soc. Serv. § 372-G (2000); N.C. Gen. Stat. § 7B-500 (2001); N.D. Cent. Code § 50-25.1-15 (2001); Ohio Rev. Code Ann. § 2151.3515 *et seq.* (Anderson 2001); Okla. Stat. tit. 10 § 7115.1 (2001); Or. Rev. Stat. § 418.017 (2001); Pa. Stat. Ann. tit. 23 § 6501 *et seq.* (2002); R.I. Gen. Laws § 23-13.1-1 *et seq.* (2001); S.C. Code Ann. § 20-7-85 (2000); S.D. Codified Laws § 25-5A-27 *et seq.* (Michie 2001); Tenn. Code Ann. § 68-11-255 (2001); Tex. Fam. Code Ann. § 262.301 *et seq.* (West 1999); Utah Code Ann. § 62A-4a-801 *et seq.* (2001); Wash. Rev. Code § 13.34.360 (2002); W. Va. Code § 49-6E-1 *et seq.* (2000); Wis. Stat. Ann. § 49.195 (West 2001); Wyo. Stat. Ann. § 14-11-101 *et seq.* (Michie 2003).

external stimuli and to pain much earlier than was then believed.[10] In sum, if courts were to delve into the facts underlying *Roe's* balancing scheme with present-day knowledge, they might conclude that the woman's "choice" is far more risky and less beneficial, and the child's sentience far more advanced, than the *Roe* Court knew.

This is not to say whether McCorvey would prevail on the merits of persuading the Supreme Court to reconsider the facts that motivated its decision in *Roe*.[11] But the problem inherent in the Court's decision to constitutionalize abortion policy is that, unless it creates another exception to the mootness doctrine, the Court will never be able to examine its factual assumptions on a record made in court. Legislatures will not pass laws that challenge the trimester ruling adopted in *Roe* (and retooled as the "undue burden" test in *Casey*; *see Casey,* 505 U.S. at 872-78, 112 S. Ct. at 2817-21). No "live" controversy will arise concerning this framework. Consequently, I cannot conceive of any judicial forum in which McCorvey's evidence could be aired.

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[10] *See* R. 5197-5347 (submissions from numerous individuals, each holding an MD or PhD, reporting that unborn children are sensitive to pain from the time of conception, and relying on peer-reviewed, scientific journals). *See, e.g.,* Mann et al., *Prevention of Allogeneic Fetal Rejection by Tryptophan Catabolism*, 281 Science 1191 (1998); P.W. Mantyh, *Inhibition of Hyperalgesia by Ablation of Lamina I Spinal Neurons Expressing the Substance P Receptor*, 278 Science 275 (1997) (cited by Dr. David Fu Chi Mark, Ph.D).

[11] Indeed, the Court seems disinclined ever to reconsider the facts, especially since in *Casey,* the Court's determinative plurality opinion refuses to justify *Roe* on its own terms and states conclusionally that "no change" in regard to the viability of a fetus's life "has left [*Roe's*] central holding obsolete." *Planned Parenthood of Southeastern Pennsylvania v. Casey,* 505 U.S. 833, 860, 112 S. Ct. 2491, 2812, 120 L.Ed.2d 674 (plurality opinion) (1992).

At the same time, because the Court's rulings have rendered basic abortion policy beyond the power of our legislative bodies, the arms of representative government may not meaningfully debate McCorvey's evidence. The perverse result of the Court's having determined through constitutional adjudication this fundamental social policy, which affects over a million women and unborn babies each year, is that the facts no longer matter. This is a peculiar outcome for a Court so committed to "life" that it struggles with the particular facts of dozens of death penalty cases each year.

Hard and social science will of course progress even though the Supreme Court averts its eyes. It takes no expert prognosticator to know that research on women's mental and physical health following abortion will yield an eventual medical consensus, and neonatal science will push the frontiers of fetal "viability" ever closer to the date of conception. One may fervently hope that the Court will someday acknowledge such developments and re-evaluate *Roe* and *Casey* accordingly. That the Court's constitutional decisionmaking leaves our nation in a position of willful blindness to evolving knowledge should trouble any dispassionate observer not only about the abortion decisions, but about a number of other areas in which the Court unhesitatingly steps into the realm of social policy under the guise of constitutional adjudication.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NORMA McCORVEY, Plaintiff,	§ § §	
v.	§	Civil Action No.
BILL HILL, DALLAS COUNTY DISTRICT ATTORNEY, Defendant.	§ § § § § §	3:03-CV-1340-N (formerly 3-3690-B and 3-3691-C)

ORDER DENYING MOTION TO RECONSIDER

(Filed July 8, 2003)

Before the Court is Plaintiff Norma McCorvey's Rule 59 Motion for Reconsideration of this Court's Order Denying Rule 60(b) Motion (the "Order").[1] For the reasons stated below, the Court denies the motion for reconsideration.

The Court notes with some surprise that McCorvey first complains that the Order wrongly characterizes her motion as based on newly discovered evidence. *See* Rule 59 Motion ¶ 6. That is simply incorrect. The Order does not refer to newly discovered evidence, Rule 60(b)(2), or the one year time limit applicable to such motions. The Order acknowledges that the Rule 60(b) Motion was filed pursuant to Rule 60(b)(5) and (6) and analyzes it as such.

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[1] The Court will refer to McCorvey's original motion under Rule 60(b) as the "Rule 60(b) Motion," and the instant motion for reconsideration as the "Rule 59 Motion."

McCorvey also complains that this Court erred in holding her motion untimely due to the passage of thirty years alone. The Court wishes to clarify that it was not purporting to set out a bright line rule that thirty years is always too long for Rule 60(b) in every case. The Court's holding was that thirty years time, standing alone, was not a reasonable time *in this case*. The Court stands by that holding. McCorvey also ignores the fact that the Court proceeded to make an alternative holding based on a complete review of the facts and circumstances of the case. Order at 7. The Court likewise stands by that holding.

McCorvey cites several cases for the proposition that thirty years is a reasonable time. *See* Rule 59 Motion at 5 n.13; Brief at 4. Most of the cited cases involve consent decrees or other injunctions.[2] None of those cases even discuss the "reasonable time" requirement of Rule 60(b).

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[2] The three cases not involving a consent decree or other injunction do not help McCorvey's argument. McCorvey cites *Fed. Deposit Ins. Corp. v. Castle*, 781 F.2d 1101 (5th Cir. 1986), as permitting a Rule 60(b) motion two years after judgment. *See* Rule 59 Motion at 5 n.13. In fact, the Rule 60(b) motion in that case was filed 39 *days* after entry of judgment. *See* 781 F.2d at 1103 n.1. McCorvey also cites *Charter Township of Muskegon v. City of Muskegon*, 303 F.3d 755 (6th Cir. 2002), as a case in which the "Court of Appeals for the Sixth Circuit recently reversed a district court which held that twenty-eight years was untimely." Brief at 4. While literally true, that description is misleading. The court of appeals reversed the district court on its finding of no subject matter jurisdiction and remanded the case for further proceedings; the majority did not address the district court's alternative finding that the motion was untimely, which the majority characterized as dicta. *Id.* at 758. As the concurring and dissenting opinion pointed out, the remand was an exercise in futility as the district court had already indicated the motion was untimely. *Id.* at 764. *United States v. Karahalias*, 205 F.2d 331 (2d Cir. 1953), was a naturalization case on unusual facts involving World War II, and is factually distinguishable.

That is perhaps because of the "universally recognized principle" in injunction cases "that a court has continuing power to modify or vacate a final decree." 11 A CHARLES ALLEN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE, AND PROCEDURE § 2961, at 391 (2d ed. 1995). This case, of course, does not involve an injunction. *See Roe v. Wade*, 314 F. Supp. 1217, 1224 (N.D. Tex. 1970); *Roe v. Wade*, 410 U.S. 113, 166 (1973). Accordingly, those cases dealing with a court's continuing jurisdiction over its own injunctions are inapposite.

McCorvey also argues that the Court's ruling on her Rule 60(b) Motion deprived her of due process. The Court finds that unpersuasive. She had notice of the timeliness requirement from the face of Rule 60(b), and she had an opportunity to be heard on timeliness in her motion. She simply failed to address the issue.[3] *See Travelers Ins. Co. v. Liljeberg Enters., Inc.*, 38 F.3d 1404, 1409 n.8 (5th Cir. 1994) ("[I]n making the 60(b)(6) motions, and concerning the key issue of timeliness, the Liljebergs were obviously required, but failed, to support their motions with affidavits or other sworn proof that they did not know of [the factual basis for their motion] prior to July 23, 1993,"). As stated in the Order, McCorvey failed to carry her burden in that regard. Order at 7. Moreover, even considering the additional materials filed with her Rule 59 Motion, the Court finds that McCorvey has still failed to carry her

[3] Although in McCorvey's Rule 59 Motion, she attempts to depict her Rule 60(b) Motion as discussing timeliness, it does not. *See* Order at 7 n.9.

burden to show she filed her Rule 60(b) Motion within a reasonable time.[4]

Finally, McCorvey disagrees with this Court's holding that a ruling on timeliness of her Rule 60(b) Motion did not require the full three judge Court. The Court stands by its analysis in the Order.

Accordingly, McCorvey's Rule 59 Motion is DENIED.

SIGNED this 8th day of July, 2003.

/s/ David C. Godbey
David C. Godbey
United States District Judge

[4] Most of the case law upon which she relies to show a changed legal environment was decided long before 2003; much, though not all, of the scientific literature she cites was published long before 2003; and she fails to explain why the collection of affidavit evidence could not have been done long before 2003. She does explain, historically, why it *did not* occur earlier, but that is not the same as showing it *could not* have been done earlier.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NORMA McCORVEY,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No.
	§	3:03-CV-1340-N (formerly
BILL HILL, DALLAS	§	3-3690-B and 3-3691-C)
COUNTY DISTRICT	§	
ATTORNEY,	§	
	§	
Defendant.	§	

ORDER DENYING RULE 60(B) MOTION

(Filed June 19, 2003)

Before the Court is Plaintiff Norma McCorvey's Rule 60(b) Motion for Relief from Judgment. The Supreme Court's decision in *Roe v. Wade,* 410 U.S. 113 (1973), ended this case over thirty years ago. McCorvey wants to reopen that judgment for this Court to conduct a wide-ranging inquiry into whether *Roe is* still good law in view of more recent Supreme Court decisions and the current state of scientific knowledge, The first order of business, however, is to decide whether Federal Rule of Civil Procedure 60(b) permits reopening that thirty year old judgment.

Rule 60(b) provides only an extraordinary, limited exception to the finality of judgments, and a motion under Rule 60(b) must therefore be brought within a "reasonable time" after the judgment. Court opinions measure a "reasonable time" under Rule 60(b) in weeks or months, not in decades. Thirty years is manifestly not a reasonable time. The Court therefore denies McCorvey's motion for relief from judgment without considering the substance of

her criticisms of *Roe*; that must wait for a different party before another court in a proper case.

I. THE RULE 60(B) MOTION DOES NOT REQUIRE A THREE-JUDGE COURT

McCorvey asks this Court to reconvene a three-judge court to consider her Rule 60(b) motion. Because the Court finds that a single judge can entertain a post-judgment motion such as this, the Court declines to request the Chief Judge of the Fifth Circuit to reconstitute the three judge court.

A three-judge court originally heard this case, pursuant to 28 U.S.C. § 2281 (1970). *Roe v. Wade,* 314 F. Supp. 1217 (N.D. Tex. 1970) (Goldberg, Hughes & Taylor, JJ.). The Act of August 12, 1976 repealed section 2281. Pub. L. No. 94-381, 90 Stat. 1119. That Act provides: "This Act shall not apply to any action commenced on or before the date of enactment." *Id.* § 7. Because McCorvey originally filed this case before August 12, 1976, it remains subject to the otherwise-repealed section 2281.[1]

The simple proposition that this case is subject to section 2281 does not answer the question of whether a single judge can resolve the post-judgment Rule 60(b)

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[1] That section provides: "An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title." 28 U.S.C. § 2281 (1970).

motion. Section 2281 invokes the procedure of section 2284. Section 2284 was likewise amended by the Act of August 12, 1976, and the amendments to section 2284 likewise do not apply to this case. The pre-amendment version of section 2284 provides in part:

> Any one of the three judges of the court may perform all functions, conduct all proceedings except the trial, and enter all orders required or permitted by the rules of civil procedure. A single judge shall not appoint a master or order a reference, or hear and determine any application for interlocutory injunction or motion to vacate the same, or dismiss the action, or enter a summary or final judgment. The action of a single judge shall be reviewable by the full court at any time before the final hearing.

28 U.S.C. § 2284(5) (1970).[2] Because the disposition of a Rule 60(b) motion constitutes an "order[] required or permitted by the rules of civil procedure" and is not

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[2] That language was substantially carried forward by the Act of August 12, 1976 into the current version of section 2284: "A single judge may conduct all proceedings except the trial, and enter all orders permitted by the rules of civil procedure except as provided in this subsection. He may grant a temporary restraining order on a specific finding, based on evidence submitted, that specified irreparable damage will result if the order is not granted, which order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the district court of three judges of an application for a preliminary injunction. A single judge shall not appoint a master, or order a reference, or hear and determine any application for a preliminary or permanent injunction or motion to vacate such an injunction, or enter judgment on the merits. Any action of a single judge may be reviewed by the full court at any time before final judgment." 28 U.S.C. § 2284(b)(3) (2001).

excluded by the second sentence of section 2284,[3] a single judge may decide a Rule 60(b) motion.

This result flowing from the text of the statute finds support in both case law and Congressional policy. Case law under section 2284 permits a single judge to handle not only preliminary, threshold matters,[4] but also post-judgment matters[5] in three-judge court cases. In a certain sense, a Rule 60(b) motion fits both categories, because while it is post judgment, it is also a threshold question of whether there should be any further proceedings on the merits. This result is also consistent with the Congressional policy "to allocate as many functions as possible to a single district judge, consistent with the statutory purpose." S. REP. NO. 94-204, at 13 (1975), *reprinted in* 1976 U.S.C.C.A.N. 1988, 2001 (quoting Note, *The Three-Judge*

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[3] The issue in McCorvey's Rule 60(b) motion presently before the Court is simply whether the prior judgment should be reopened. It does not address final relief on the merits and is not a "motion to . . . enter a . . . final judgment" prohibited to a single judge under former section 2284(5). It merely determines whether the extant judgment should be reopened. If the judgment in this case were reopened, the ensuing question of what relief should be granted on the merits might belong before a three-judge court. But the preliminary question of whether to reopen the judgment is not within the bar of the second sentence of former section 2284(5).

[4] *See* 17 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 4235, at 614-16 & nn.41, 43 (2d ed. 1988) (citing cases where single judge dismissed matters for: insubstantial constitutional question, lack of standing, lack of subject matter jurisdiction, lack of amount in controversy, failure to join indispensable parties, failure to state a claim, and inappropriateness of equitable relief) [hereinafter WRIGHT & MILLER].

[5] *Id.* § 4235, at 624 n.69 (citing cases where single judge acted post-judgment to: assess damages, rule on writ of assistance in aid of judgment, establish time limit for compliance, hear civil contempt proceedings, tax costs, and award attorneys' fees).

District Court: Scope and Procedure Under Section 2281, 77 HARV. L. REV. 299, 306 (1963)).[6] *See also Bailey v. Patterson,* 369 U.S. 31, 33 (1962) ("three judge requirement is a technical one to be narrowly construed"). Accordingly, the Court declines to request the Chief Judge of the Fifth Circuit to reconvene the three-judge court to consider McCorvey's Rule 60(b) motion.[7]

II. MCCORVEY DID NOT BRING HER MOTION WITHIN A REASONABLE TIME

McCorvey moves the Court for relief from judgment under Rule 60(b)(5) & (6). Rule 60(b) provides, in pertinent part:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or

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[6] This citation is to the legislative history of the Act of August 12, 1976. Because that Act substantially brought forward the language of section 2284(5), the expression of Congressional intent would appear to be applicable to the predecessor statute as well.

[7] McCorvey is not entitled to review of this Order by a three-judge court either. The last sentence of pre-amendment section 2284(5) permits review of a single judge's decisions by the full three-judge court "at any time *before* the final hearing." 28 U.S.C. § 2284(5) (1970) (emphasis added). It is now 33 years after the final hearing by the three-judge court, so the statute does not permit review by a three-judge court; any review lies with the Court of Appeals. *Accord Hamilton v. Nakai,* 453 F.2d 152 (9th Cir. 1971), *cert. denied,* 406 U.S. 945 (1972) (single judge could consider post-judgment application for writ of assistance, and denial of that relief falls within appellate jurisdiction of court of appeals).

> it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. *The motion shall be made within a reasonable time,* and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken.

FED. R. CIV. P. 60(b) (emphasis added). Because the Court finds the lapse of thirty years to exceed a reasonable time, the Court denies McCorvey's motion.

"As a general rule, the desirability of orderliness and predictability in the judicial process speaks for caution in the reopening of judgments." *Allen v. Jacobson,* 82 F.R.D. 355, 358 (N.D. Tex. 1979) (citing *Fackelman v. Bell,* 564 F.2d 734, 735 (5th Cir. 1977)). Courts "have administered Rule 60(b) with a scrupulous regard for the aims of finality" and impose "a requirement of exceptional or extraordinary circumstances [in] motions under Rule 60(b)(6)." 11 WRIGHT & MILLER § 2857, at 259, 260. With that general view of Rule 60(b) in mind, the Court will address whether McCorvey's motion was filed within a reasonable time.

In *Travelers Ins. Co. v. Liljeberg Enterprises, Inc.,* 38 F.3d 1404, 1410 (5th Cir. 1994), the Court observed:

> [A] 60(b)(6) motion is not subject to the one year limitation imposed upon subparts (1) through (3). Instead, a party seeking 60(b)(6) relief must file the motion within a "reasonable time," [*Liljeberg v. Health Servs. Acquisition Corp.,* 486 U.S. 847, 863 (1988)], which depends upon the particular facts and circumstances of the case. *First RepublicBank Fort Worth v. Norglass, Inc.,* 958 F.2d 117, 119 (5th Cir. 1992); *Ashford v. Stewart,* 657 F.2d 1053, 1055 (9th Cir. 1981) ("What constitutes 'reasonable time' depends on the facts of

> each case, taking into consideration the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties.").

In considering those principles,[8] courts have found time ranges of weeks to months to even a few years to be within a reasonable time, *see* WRIGHT & MILLER § 2866, at 385 n.8 (collecting cases); courts have also found those same time ranges *not* to be within a reasonable time. *See id.* § 2866, at 386 n.9 (collecting cases). This Court has not found *any* case in which a period *remotely* close to thirty years was considered a "reasonable time" under Rule 60(b). Accordingly, the Court finds that McCorvey's thirty year delay is of such great magnitude that her motion was not made within a reasonable time due to the length of time alone.

Alternatively, and additionally, the Court will consider whether thirty years constitutes a reasonable time in view of "the particular facts and circumstances of the case." That examination is made more difficult because McCorvey does not discuss timeliness anywhere in her twenty-two page motion or its fifty-five page supporting brief.[9] As the movant, it is incumbent on McCorvey to plead and prove that her motion was filed within a reasonable time of the judgment. *See Travelers,* 38 F.3d at 1409 n.8 ("[I]n making the 60(b)(6) motions, and concerning the key issue of

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[8] Those principles apply with equal force to timeliness under Rule 60(b)(5).

[9] Although McCorvey does discuss "new" evidence at length, that is in the context of the merits of her Rule 60(b) motion. In that connection, she argues only that the "new" evidence was not available in 1973. The current state of the record indicates that with reasonable diligence, the additional evidence she tenders could have been presented long before 2003.

timeliness, the Liljebergs were obviously required, but failed, to support their motions with affidavits or other sworn proof that they did not know of [the factual basis for their motion] prior to July 23, 1993."). McCorvey likewise failed to carry her burden in that regard. Based on the Court's review of McCorvey's motion and supporting documentation and taking into account the facts of this case, taking into consideration the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties, the Court finds that McCorvey' s Rule 60(b) motion, thirty years after the fact, was not made within a reasonable time.[10]

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[10] The Court has decided this motion without an evidentiary hearing for two reasons. First an evidentiary hearing would not aid the Court's determination. No evidence at the hearing will contest that: 2003-1973=30. Moreover, McCorvey does not request an evidentiary hearing on the issue of the timeliness of her motion, but only on the substantive bases for the motion. *See Wilson v. Johns-Manville Sales Corp.*, 873 F.2d 869, 873 (5th Cir. 1989) ("Considering the extensive pleadings and the failure of the plaintiffs to adequately indicate how a hearing would have aided the court's determination, we find that the district court did not abuse its discretion in not holding a hearing."). Secondly, timeliness is not the only infirmity in McCorvey's motion. Before considering McCorvey's argument that *Roe* has been supplanted by law and science (a matter hardly within *this* Court's purview) or whether Rule 60(b)(5) or (6) would afford relief from the judgment (a question problematic on its own procedural merits), the Court would need to address numerous other threshold issues implicitly raised by her motion, including but not limited to: standing, mootness, judicial estoppel, stare decisis, and the binding nature of Supreme Court precedent upon this Court. Given that this motion is plainly untimely, to delay resolution until after an evidentiary hearing would needlessly require the Court and the litigants to devote significant resources to these additional serious threshold questions.

CONCLUSION

Whatever else it may or may not have done, the Supreme Court's *Roe* decision thirty years ago ended *this* lawsuit between *these* parties. Whether or not the Supreme Court was infallible, its *Roe* decision was certainly final in this litigation. It is simply too late now, thirty years after the fact, for McCorvey to revisit that judgment. Other parties in other cases may be able to reexamine those issues, but not McCorvey in this case. Accordingly, McCorvey's Rule 60 Motion for Relief from Judgment is hereby DENIED.

SIGNED this 19th day of June, 2003.

/s/ David C. Godbey
David C. Godbey
United States District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-10711

NORMA MCCORVEY, formerly known as Jane Roe
Plaintiff-Appellant

v.

BILL HILL, Dallas County District Attorney
Defendant-Appellee

Appeal from the United States District Court for the Northern District of Texas, Dallas

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ON PETITION FOR REHEARING EN BANC

(Filed Oct. 18, 2004)

(Opinion 9/14/04, 5 Cir. ___, ___ F.3d ___)

Before JONES, WIENER, and PRADO, Circuit Judges.

PER CURIAM:

(X) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel

Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Edith H. Jones
United States Circuit Judge

U.S. Constitution Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Federal Rule of Civil Procedural

Rule 60. Relief from Judgment or Order

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable

time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28 U.S.C., § 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Texas Statutes

Art. 1191. **Abortion.** – If any person shall designedly administer to a pregnant woman or knowingly procure to be administered with her consent any drug or medicine, or shall use towards her any violence or means whatever externally or internally applied, and thereby procure an abortion, he shall be confined in the penitentiary not less than two nor more than five years; if it be done without her consent, the punishment shall be doubled. By "abortion" is meant that the life of the fetus or embryo shall be destroyed in the woman's womb or that a premature birth thereof be caused. [Acts 1907, p. 55.]

Art. 1192. **Furnishing the means.** – Whoever furnishes the means for procuring an abortion knowing the purpose intended is guilty as an accomplice.

Art. 1193. **Attempt at abortion.** If the means used shall fail to produce an abortion, the offender is nevertheless guilty of an attempt to produce abortion, provided it be shown that such means were calculated to produce that result, and shall be fined not less than one hundred nor more than one thousand dollars.

Art. 1194. **Murder in producing abortion.** – If the death of the mother is occasioned by an abortion so produced or by an attempt to effect the same it is murder.

Art. 1196. **By medical advice.** – Nothing in this chapter applies to an abortion procured or attempted by medical advice for the purpose of saving the life of the mother.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Norma McCorvey, formerly known as JANE ROE	§	
Plaintiff,	§	
vs.	§	**CIVIL ACTION**
HENRY WADE, Through His Official Successor in Office, William "Bill" Hill, Dallas County District Attorney,	§	**NO. 3-3690-B and NO. 3-3691-C**
Defendant.	§	

AFFIDAVIT OF NORMA MCCORVEY

STATE OF TEXAS	§	
	§	KNOW ALL MEN BY
	§	THESE PRESENTS:
COUNTY OF DALLAS	§	

BEFORE ME, the undersigned authority, on this day personally appeared NORMA MCCORVEY, who after being duly sworn upon her oath deposed and said as follows:

1. My name is Norma McCorvey and I reside in Dallas, Texas. I am competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. Thirty-three years ago, I came before the United States District Court Northern District of Texas Dallas Division as the Plaintiff "Jane Roe", the young woman whose case legalized abortion in the United States, *Roe v. Wade*. At that time, I was an uninformed

young woman. Today I am a fifty-five-year old woman who knows the tragedy that arose from my unsuspecting acquiescence in allowing my life to be used to legalize abortion.

3. In 1970, I told this Court in the form of an affidavit that I desired to obtain an abortion never really understanding the ramifications. Today, I once again appear before this Court in the form of an affidavit to present evidence never presented in my earlier case, but today I come with a complete understanding of what my participation *Roe v. Wade* has brought to this country. My personal experience with this three-decade abortion-experiment has compelled me to come forward, not only for myself and the women I represented then, but for those women whom I now represent. It is my participation in this case that began the tragedy, and it is with great hope that I now seek to end the tragedy I began.

4. Because of my role in *Roe v. Wade* and my subsequent experience with abortion, this Court will be provided with information and a perspective unavailable from other source. Previously, the courts, without looking into my true circumstances or taking the time to decide the real impact abortion would have upon women, used me, my life, and my circumstances to justify abortion. Those judges who made the earlier decisions never had the advantage of the real facts to base their decision because the entire basis for *Roe v. Wade* was built upon false assumptions. Consequently, the decision was rendered in a vacuum totally devoid of findings of facts and solely based upon what abortion advocates wanted women. Because the courts allowed my case to proceed without my testimony, without ever explaining to me the reality of abortion, without being cross-examined on my erroneous perception of abortion, a tragic mistake

was made – a mistake that this Court has the opportunity to remedy.

5. The years following the *Roe v. Wade* decision have been very difficult, in a number of respects, but my life was never easy. Prior to my pregnancy with the "Roe" baby, I gave birth to two other children. My first, a daughter, was adopted by my mother. It was difficult to part with my child, yet I have always been comforted by the fact that my daughter is alive. My second daughter was raised by her father, a young intern at Baylor Methodist Medical School. He wanted to get married and make a home, but I wasn't ready for that kind of commitment. Later, when I became pregnant with the "Roe" baby, I was really in a predicament. My mother expressed her disapproval and told me how irresponsible I had been. She made it clear that she was not going to take care of another baby.

6. Although I knew I was pregnant, I waited for a while before I went to the doctor. While I was waiting to be examined, I questioned the some of ladies in the waiting room about whether they knew where a woman could go to have an abortion. A lady told me where an illegal clinic was located and told me that it would cost $250.00. Following our discussion, I told the doctor that I wanted to have an abortion, but he refused stating that abortion was illegal. He didn't believe in abortion and gave me the phone number of an adoption attorney.

7. When I had saved about two hundred dollars, I took a cross-town bus to the illegal clinic, which turned out to be a dentist's office that had been closed down the previous week. For some reason, I felt relieved yet angry at the same time. All my emotions were peaking; first, I was angry, then I was happy, and then I'd cry. From the abortion clinic, I took the bus

to my dad's apartment and decided to speak with the adoption attorney. The attorney set up the meeting and referred me to Sarah Weddington, the attorney who represented me in *Roe v. Wade.*

8. Following the adoption attorney's introduction, Weddington invited me out to dinner. Although Weddington and I were about the same age, our lives were quite different. She was a young attorney, and I was homeless and lived in a park. Unconcerned about politics, I sold flowers and an underground newspaper that described the types and availability of illegal narcotics. At the time, I simply sought to survive. During our initial meeting, I met with Sarah Weddington and her friend, Linda Coffee. Both Weddington and Coffee had recently finished law school, and they wanted to bring a class action suit against the State of Texas to legalize abortion.

9. During our meeting, they questioned me, "Norma, don't you think that abortion should be legal?" Unsure, I responded that I did not know. In fact, I did not know what the term "abortion" really meant. Back in 1970, no one discussed abortion. It was taboo, and so too was the subject of abortion. The only thing I knew about the word was in the context of war movies. I had heard the word "abort" when John Wayne was flying his plane and ordered the others to "Abort the mission." I knew "abort" meant that they were "going back". "Abortion", to me, meant "going back" to the condition of not being pregnant. I never looked the word up in the dictionary until after I had already signed the affidavit. I was very naive. For their part, my lawyers lied to me about the nature of abortion. Weddington convinced me, "It's just a piece of tissue. You just missed your period." I didn't know during the *Roe v. Wade* case that the life of a human being was terminated.

10. That evening, the two female lawyer and I discussed the case over a few pitchers of beer and pizza at a small restaurant in Dallas. Weddington, Coffee, and I were drinking beer and trying to come up with a pseudonym for me. I had heard that whenever women were having illegal abortions, they wouldn't carry any identification with them. An unidentifiable woman was often referred to as Jane Doe. So we were trying to come up with something that would rhyme with "Doe". After three or four pitchers of beer, we started with the letter "a" and eventually we reached "r" and agreed on "Roe". Then I asked, "What about Jane for the first name?" Janie used to be my imaginary friend as a child. I told them about her and how she always wanted to do good things for people, and it was decided – I became Jane Roe, by the stroke of a pen.

11. These young lawyers told me that they had spoken with two or three other women about being in the case, but they didn't fit their criteria. Although I did know what "criteria" meant, I asked them if I had what it took to be in their suit. They replied, "Yes. You're white. You're young, pregnant, and you want an abortion." At that time, I didn't know their full intent. Only that they wanted to make abortion legal, and they thought I'd be a good plaintiff. I came for the food, and they led me to believe that they could help me get an abortion.

12. After our meeting, I went to my father's apartment and began to drink alcohol heavily. I was depressed with my plight in life. I tried to drown my troubles in alcohol. Shortly thereafter I even attempted suicide by slitting my wrists. When my father questioned me about what was troubling me, I responded that I was pregnant again. When he asked me what I was going to do, I responded that I was thinking about having

an abortion. He inquired, "What is that?" I said, "I don't know. I haven't looked it up yet."

13. Later, Weddington and Coffee presented the affidavit for my signature at Coffee's office. I told them that I trusted them and that I did not need to read the affidavit before I signed it. I never read the affidavit before signing it and do not, to this very day, know what is written in the affidavit. Both Weddington and Coffee were aware that I did not read the affidavit before I signed it. At no time did they tell me that I had to read it before they accepted my signature. I told them that I trusted them. We called ourselves "the three musketeers." I know now that is one place where I went wrong. I should have sat down and I should have read the affidavit. I may not have understood everything in the affidavit and I would have probably signed it anyway. I trusted the lawyers.

14. My lawyers never discussed what an abortion is, other than to make the misrepresentation that "it's only tissue". I never understood that the child was already in existence. I never understood that the child was a complete separate human being. I was under the false impression that abortion somehow reversed the process and prevented the child from coming into existence. In the two to three years during the case no one, including my lawyers told me that an abortion is actually terminating the life of an actual human being. The courts never took any testimony about this, and I heard nothing which shed light on what abortion really was.

15. In 1972, Sarah Weddington argued in the courts, presumptuously on my behalf, that women should be allowed to obtain a legal abortion. The courts did not ask whether I knew what I was asking for. The abortion decision that destroyed every state law protecting the rights of women and their unborn babies was

based on a fundamental misrepresentation. I had never read the affidavit, and I did not know what an abortion was. Weddington and the other supporters of abortion used me and my circumstance to urge the courts to legalize abortion without any meaningful trial which addressed the humanity of the baby, and what abortion would do to women. At that time, I was a street person. I lived, worked, and panhandled out on the streets. My totally powerless circumstance made it easy for them to use me. My presence was a necessary evil. My real interests were not their concern.

16. As the class action plaintiff in the most controversial U.S. Supreme Court case of the twentieth century, I only met with the attorneys twice. Once over pizza and beer, when I was told that my baby was only "tissue" and another time at Coffee's office to sign the affidavit. I had no other personal contacts. I was never invited into court. I never testified. I was never present before any court on any level, and I was never at any hearing on my case. The entire case was an abstraction. The facts about abortion were never heard . Totally excluded from every aspect and every issue of the case, I found out about the decision from the newspaper just like the rest of the country.

17. In a way, my exclusion, and the exclusion of real meaningful findings of fact in *Roe v. Wade*, is symbolic of the way in which the women of the nation and their experiences with abortion have been ignored in a national debate by the abortion industry. The view that is presented is the view of what the abortion industry thinks is good for women. The reality of women's experiences is never presented.

18. I never had an abortion and gave the baby up for adoption. It was only later in life that I was confronted with the reality of abortion. Being unskilled

and uneducated, with alcohol and drug problems, finding and holding a job was always a problem for me. But with my notoriety from *Roe v. Wade,* abortion facilities, usually paying a dollar an hour more than minimum wage, were always willing to add "Jane Roe" to their ranks.

19. In 1992, I began working in abortion facilities where I was always in control. I could either make a woman stay or help her leave. My duties were similar to those of a LVN or an RN, such as taking patients' blood pressure and pulse and administering oxygen, although I never took any statistics or temperatures. Basically, I would stand inside the procedure room, hold the women's hands, and say things to distract them by saying, "What is the most exciting, or happiest period of your life?" Meanwhile, the abortionist was performing what is represented as a "painless" procedure and the women were digging their nails into me in an effort to endure the pain.

20. I worked in several abortion facilities over the years. In fact, I even worked at two facilities at the same time. They were all the same with respect to the condition of the facilities and the "counseling" the women receive. One clinic where I worked in 1995 was typical: Light fixtures and plaster falling from the ceiling; rat droppings over the sinks; backed up sinks; and blood splattered on the walls. But, the most distressing room in the facility was the "parts room". Aborted babies were stored here. There were dead babies and baby parts stacked like cordwood. Some of the babies made it into buckets and others did not, and because of its disgusting features, no one ever cleaned the room. The stench was horrible. Plastic bags full of baby parts that were swimming in blood were tied up, stored in the room and picked up once a week. At another clinic, the dead babies were kept in a big white freezer full of dozens of jars, all

full of baby parts, little tiny hands, feet, and faces visible through the jars, frozen in blood. The abortion clinic's personnel always referred to the dismembered babies as "tissue."

21. While all the facilities were much the same, the abortion doctors in the various clinics where I worked were very representative of abortionists in general. The abortionists I knew were usually of foreign descent with the perception that the lax abortion laws in the United States present a fertile money-making opportunity. One abortionist, in particular, would sometimes operate bare-chested, and sometimes shoeless with his shirt off, and earned a six-figure income. He did not have to worry about his bedside manner, learning to speak English, or building a clientele.

22. While the manners of the abortionists and the uncleanliness of the facilities greatly shocked me, the lack of counseling provided the women was also a tragedy. Early in my abortion career, it became evident that the "counselors" and the abortionists were there for only one reason – to sell abortions. The extent of the abortionists' counseling was, "Do you want an abortion? Ok, you sign here and we give you abortion." Then he would direct me, "You go get me another one." There was nothing more. There was never an explanation of the procedure. No one even explained to the mother that the child already existed and the life of a human was being terminated. No one ever explained that there were options to abortion, that financial help was available, or that the child was a unique and irreplaceable. No one ever explained that there were psychological and physical risks of harm to the mother. There was never time for the mother to reflect or to consult with anyone who could offer her help or an alternative. There was no informed consent. In my opinion, the only thing

the abortion doctors and clinics cared about was making money. No abortion clinic cared about the women involved. As far as I could tell, every woman had the name of Jane Roe.

23. Typically, most of the women would cry as soon as the suction machine was shut off, or, at some point. Sometimes, I thought that they realized what had been done to their babies. Once, I heard a woman call her mother and say, "I just killed my baby. I'm so glad you never killed me!"

24. The doctors always hid the truth from the mothers. I would say about eighty-percent of the women would try to look down during the abortion and try to see what was happening. This is the reason the doctors would start with the scalpel: to make sure there was just blood and torn up "tissue" for the women to see. Specifically, I remember one woman who came in for an abortion, a pretty, sweet young woman about eighteen years old, with a teddy bear. During the procedure she looked down and saw the baby's hand fall into the doctor's hand. She gasped and passed out. When she awoke and asked about what she saw, I lied to her and told her it didn't happen. But she insisted that she had seen part of her baby. A few weeks later, when she returned for her follow-up exam, she was a changed person: her sweetness had died and had been replaced with an indescribable hardness. I could not look her in the eye. It took quite a few beers that night to make that particular day go away.

25. In all of the clinics where I worked, the employees were forbidden to say anything that might talk the mother out of an abortion. While the abortionists' counseling was non-existent, my counseling technique gradually became different depending on my mood and the stage of my career. The experience of

abortion began to take its toll on me. In later years, I would sometimes take all the instruments that were used in an abortion procedure and purposely leave a little of the blood on some the instruments. Laying the instruments out on the little table in front of the woman, I would tell her, "This is the first instrument that is going to be inserted into your vaginal area." It would have just had a little smudge of blood, and I thought it was very dramatic. In retrospect, I don't even know why I was doing these things. It was as if I was trying to talk these women out of the abortion – something we were forbidden to do. In other counseling sessions, I would demonstrate the position and warn her that the instruments were sharp, and that if she moved the doctor might slip, and puncture her uterus, and she would bleed to death. In other situations, when a woman asked me how much it cost, I asked her in response how much she wanted to pay to kill her baby. She replied, "They told me it wasn't a baby." I responded, "What do you think it is inside you, a fish?" Other times, I would comfort them after the abortion by saying, "It wasn't a baby. It was only a missed period." Sometimes when I managed to make the women unsure, I would offer to refund their money except for the ultrasound.

26. After I saw all the deception going on in the abortion facilities, and after all the things that my supervisors told me to tell the women, I became very angry. I saw women being lied to, openly, and I was part of it. There's no telling how many children I helped kill while their mothers dug their nails into me and listened to my warning, "Whatever you do, don't move!" Because I was drunk or stoned much of the time, I was able to continue this work for a long time, probably much longer than most clinic workers. It is a high turnover job, because of the true nature of the business. The abortion business is an inherently dehumanizing

one. A person has to let her heart and soul die or go numb to stay in practice. The clinic workers suffer, the women suffer, and the babies die. I can assure this Court that the interest of these mothers is not a concern of abortion providers. I obviously advocated legalized abortion for many years following *Roe v. Wade*. But, working in the abortion clinics forced me to accept what abortion really is: It is a violent act which kills human beings and destroys the peace and the real interests of the mothers involved.

/s/ Norma McCorvey
Norma McCorvey a.k.a. Jane Roe of *Roe v. Wade*

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority, on this day of 6-11-03, 2003.

/s/ Raymond J. Sexton
NOTARY PUBLIC IN AND
FOR THE STATE OF TEXAS

[SEAL] RAYMOND J. SEXTON
Notary Public
STATE OF TEXAS
Commission
Expires: 10/27/03

AFFIDAVIT

* * *

The State of CA

* * *

Cheryl Allen

* * *

Tell when and where your abortion occurred: Even while I was married I had the first in Los Angeles in 1970; the second in Long Beach – 1973

* * *

How has your abortion affected you? Great sorrow and shock when I realized what I had done out of sheer ignorance. I *miss* deeply the child that I lost by spontaneous abortion and the 2 children whom I murdered. I love my living 3 children with all my heart and wish I knew the other 3 that I don't have. I have so much time for them all now.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Do not murder to solve an "inconvenience" children – all children are a GIFT from the Lord. He will provide for them. Many childless couples are on waiting lists, longing to adopt a child. Your child is NEVER unwanted.

Based on your own experience, what would you tell a court that believes abortion should be legal? Human life which is sacred begins at conception and any act to end that life constitutes murder of the 1st Degree. All pregnant women should be protected from all harm due to two lives (at least) together, both most vulnerable.

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[000027]

AFFIDAVIT

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The State of District of Colombia (Washington, D.C.)

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Lisa Harrison
Anthony

* * *

Tell when and where your abortion occurred: February 1973 in a clinic in Washington, D.C. and at Walter Deed Medical Center in Washington, D.C.

* * *

How has your abortions affected you? It nearly destroyed me. I was so guilty. I never felt whole.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Don't do it!!!!!!!!!!!!! If you must, give the baby away in adoption.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would say that I would not want to be in their shoes on judgement day.

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[000037]

AFFIDAVIT

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The State of Kentucky

* * *

Lisa K. Arnold

* * *

Tell approximately when and where your abortion occurred: 11-1-75 Toledo, Ohio

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How has your abortion affected you? It forever altered my life physically, emotionally, and spiritually. I was never able to have children. I suffered from depression, anger, lowered self-esteem, anxiety, fear & startle reactions. It took me 20 years to come back into a relationship with God because I was afraid he hated me for what I had done. Part of me died with my child that day.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? That she will never be the same. Women were created to nurture their children not kill them. No one kills with impurity and the ramifications are life long. If killing your child is considered a good decision, what would a bad decision be?

Based on your own experience, what would you tell a court that believes abortion should be legal? The same thing I just stated above based not only on my experience but the

hundreds of post-abortive women I have counseled over the past 8 years.

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[000048]

AFFIDAVIT

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The State of Colorado

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Susan L. Babcock

* * *

Tell when and where your abortion occurred: March 1977 in Fort Worth, Texas. I do not know the name of the clinic.

* * *

How has your abortion affected you? My abortion has affected me in numerous ways. I felt tremendous guilt and confusion in the recovery room. I felt I had done something terribly wrong but didn't understand why I felt that way. I was very depressed and withdrawn afterward and could not talk about what I was feeling. I was unable to discuss the abortion for many years, despite my husband trying to discuss it with me. I never revealed my abortion as part of my medical history. It affected my relationship with my husband for over 20 years. I worried about being punished for killing my baby and feared I would lose my children after they were born. I have had many medical problems that I attribute to having the abortion including pre-term pregnancies, abnormal paps, and abnormal periods.

* * *

Based on your own experiences, what would you tell a woman thinking of having an abortion? I would tell her to reconsider and to not have an abortion. I would tell her of the many long-term effects of the abortion. I would tell her of the physical, emotional and spiritual consequences of having an abortion. I have shared my personal experience many times with women considering an abortion and the pain associated with having the abortion, as well as the affects of those that have trusted me with their abortion experience. I would tell her that I think it is murder.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would first say I believe it is murder to kill an unborn child. I would say that if woman knew what they later learned from their mistake, they would understand that it was murder. I would tell them of the hidden statistics of the many long-term effects women suffer in relation to having an abortion such as miscarriage, reproductive problems, and the mental aguish of taking a life. I would say to the courts that if a woman saw pictures of what a fetus was like developmentally, how brutal the abortion procedure is, how a baby suffers during the procedure, and the possible long term effects, they would never choose to end their babies life. I would tell the courts of the many women I have met who are still suffering because of their abortions and they don't know why. I would say I have not met anyone who has had an abortion who has not expressed regret in having it. I would tell the courts they should be protecting women from this harmful procedure and to not be influenced by the those profiting from [000058] abortions. I would tell them to listen to the experience of those

who have gone through an abortion and to not listen to those who have something to gain from performing them.

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[000059]

AFFIDAVIT

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The State of Arizona

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Catherine C. Barnella

* * *

Tell approximately when and where your abortion occurred: August 1974 San Diego, CA

* * *

How has your abortion affected you?

I have lived with regrets and feelings of guilt since 1974. Every day is thoughts of what I experienced. Depression is within reach, I have to fight it every day. When I think I have dealt with it all, I am frequently overwhelmed with emotions and have to start over.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? I would tell her, that abortion is Not a quick fix or a reasonable solution, it is something that she will have to live with the rest of her life. There are alternatives, choose Life!

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell the

court that abortion isn't about ending a pregnancy, its about killing a child and affecting women in ways they would never understand. 2 lives destroyed.

[000071]

AFFIDAVIT

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The State of Colorado

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Terri Baxter

* * *

Tell when and where your abortion occurred: Summer 1974 in Atlanta, GA

* * *

How has your abortion affected you? for years I lived with guilt & shame & fear not being able to talk about it. I have been through a divorce – I believe is directly linked to the abortions. I also believe the breast cancer is a direct link.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Not to have it – there are to many other options and help available. Also, of all the women I've talked to – the ones who had an abortion sooner or later regretted it & the ones that carried to term never regretted it.

Based on your own experience, what would you tell a court that believes abortion should be legal? the physical, & emotional risks are to great to put a woman through.

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[000088]

AFFIDAVIT

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The State of Minnesota

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Karen A. Bellmore

* * *

Tell when and where your abortion occurred: April 2, 1982 at Midwest Women's Health Center in Minneapolis, MN.

* * *

How has your abortion affected you? Very negative. I was sad & depressed for years, and I'm still very saddened that I made such a terrible decision. The worst part is the guilt & anger within.

* * *

Based on your own experiences, what would you tell a woman thinking of having an abortion? Don't do it! You will regret it the rest of your life. No matter what the reason, don't have an abortion because you would be killing your own child. I believe it is not a person's decision who lives & dies – only God's. You will regret it.

Based on your own experience, what would you tell a court that believes abortion should be legal? It's WRONG!

Murder should be illegal no matter what age, size or development of an individual life. If its illegal to kill a baby after birth, then it should be illegal before birth. It's still the same life. Humans should not have legal access to abortion. Look at your own child or someone else's & imagine killing them before they had a chance at life.

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[000102]

AFFIDAVIT

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The State of Ohio

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Suzanne M. Bishop

* * *

Tell when and where your abortion occurred: Founders Womens Clinic Broadstreet Columbus, Ohio May 03, 1978

* * *

How has your abortion affected you? I am 44 yrs old and childless, I desperately miss what could have been. I *know* in years past I drank, did drugs and many other self-abusive behaviors, to bury my grief and pain. I *know* this led to bulimia, which led to diabetes. My hysterectomy led to osteoporosis. Would you like to read what I have written over the years?

* * *

Based on your own experiences, what would you tell a woman considering abortion? DO NOT DO IT! There are alternatives. You cannot fathom the long term consequences

when the reality sets in and you realize you are not just unpregnant you ARE the mother of a dead baby. That pain doesn't go away.

Based on your own experiences, what would you tell a court that believes abortion should be legal? Life begins at conception, God says thou shall not kill anyone including babies created in his image. By legalizing abortion every "Judge" carries the blood of the innocent on their hands. Every Judge is as responsible as I am for the outcome of my choice though their guilt is multiplied millions of times over.

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[000125]

AFFIDAVIT

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The State of Delaware

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WILMA BOEHMER

* * *

Tell when and where your abortion occurred: 1970 in Baltimore, Maryland and 1975 in Baltimore, Maryland

* * *

How has your abortion affected you? It is a pain that goes directly to the soul. It never lets go. You might think its gone but it is always there. Anything can trigger it. I had to have a hysterectomy at the age of 28. I had pre-cancer tumors on my ovaries, and I was bleeding all the time. I also had a severe case of endometriosis. Due to the abortion, I

have built a wall around me where even if people tell me that they love me, I cannot feel it. I know God loves me, but I can't feel it.

* * *

Based on your own experiences, what would you tell a woman thinking of having an abortion? I couldn't tell her strong enough not to do it. Hind sight is always 20/20. I would do whatever possible to prevent it from happening. I really feel that carrying all this pain (and I have not told anyone except my husband) has affected me mentally, emotionally, and physically all of my life and I am to the point where I am disabled.

Based on your own experience, what would you tell a court that believes abortion should be legal? It is definitely not OK with God. No matter what age or weeks the child is, it is murder and you feel like you have committed murder. I have gone over the ten commandments and have broken everyone of them.

* * *

[000133]

AFFIDAVIT

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The State of Texas

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Tammy Boyd

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Tell approximately when and where your abortion occurred: 1984 Routh Street Women's Clinic

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How has your abortion affected you? For many years I feel like I just blocked it out or never came to terms with what had happened. One day on a web site I saw pictures or graphs showing a partial abortion and I just wept for so long. Even though I had not had this procedure I know at that moment I had lost something very precious. I gave my baby a name and prayed for forgiveness for my part in it all. The memories aren't what they use to be but I would love to go back and change the ending if it would not change the wonderful life I have now.

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Based on your own experiences, what would you tell a woman thinking of having an abortion? There are only regrets that come along with it, if the people at the clinics cared for you they would tell you of all the risks both emotionally & physically. I would rather wonder about how a child is growing up than wondering what might have been.

Based on your own experience, what would you tell a court that believes abortion should be legal? Aside from being cruel & unusual, if we are a protector of life, liberty and pursuit of happiness, we should babies to live to pursue these things.

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[000143]

AFFIDAVIT

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The State of MS

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M. J. B.

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Tell when and where your abortion occurred: Memphis, TN

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How has your abortion affected you? negatively, depression, very severe, heavy bleeding every two weeks for years.

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Based on your own experiences, what would you tell a woman considering having an abortion? Don't do it

Based on your own experience, what would you tell a court that believes abortion should be legal? They are crazy, and don't realize it is morally wrong young teens can get an abortion with out parents knowing, abortion affects the whole family & society, if an unborn child's life is worth nothing why is anyone else's.

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[000155]

AFFIDAVIT

The State of Indiana

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Katrina L. Brummett

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Tell approximately when and where your abortion occurred: My first abortion was in 1976. The abortion was performed by an OBGYN in the Bloomington, IN hospital. The second abortion was in 1977 and was performed at a Planned Parenthood Clinic in Indianapolis, IN.

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How has your abortion affected you? Thankfully, to my knowledge, I have not had any physical consequences to my abortions. However, I suffered tremendously on an emotional and spiritual level for many years. I dealt with my abortion decisions by becoming emotionally numb, and eventually became incapable of attachment even in my relationships with my husband and my two daughters. I had violated my personal moral standards and therefore felt worthless, tainted, unworthy. I continued to make bad decisions that hurt not just myself, but my family, in an effort to escape the guilt and emptiness.

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Based on your own experiences, what would you tell a woman considering an abortion? Abortion is not an "easy" way to erase poor choices or to avoid unwanted consequences. The unfortunate truth of abortion is that we don't get to determine how this decision will effect us, or if in fact it effects us at all. When you are facing an "unwanted" pregnancy, *all* the options are difficult, the truth is **there is no "easy way out."** So please don't make a decision for

abortion believing that it's a quick, easy fix. There are *better* options that won't leave you regretting for a lifetime a decision that you cannot possibly take back. There is tremendous potential for serious physical, emotional and spiritual harm, consequences that can scar you for a lifetime. You do have other options and there are many people, churches and organizations that are willing to help and support you and your family in this decision.

[000179]

Based on your own experience, what would you tell a court that believes abortion should be legal? The information the courts used in order to create the law and uphold the law since its formation is based on lies and half-truths. The two women whose life situations these laws were based, now see the truth about the harmful effects of abortion and they themselves are fighting to reverse the law, that should speak louder than anything. There are numerous statements of "fact" that have been used to support abortion as a legal right. One of the points of persuasion for legalized abortion has been "women have the right to make their own choices regarding their health and future." I completely agree with this statement. But it is also my right within that context to be told the truth about abortion, all of the truth, and nothing but the truth. I should be able to confidently rely on the abortion provider to give me that truth, no matter how my ultimate decision effects the provider. Why, when a woman is given an ultrasound before her procedure, do they turn away the monitor so as to not allow the woman to view what in the context of a "wanted" pregnancy the women sees as her baby; this "blob of tissue" has hands, legs, eyes, a functioning brain and heart? Why are the potential physical and emotional risks minimized if talked of at all? You have no idea the

emotional pain and turmoil I experienced when I saw during my "wanted" pregnancy what that "blob of tissue" looked like at 6-8 weeks, when I terminated. **I have the right to know and to make an informed decision that I can live with for a lifetime, this is my most basic human right.** The law was supposedly created to protect women, their rights and health. Abortion in no way protected me physically, emotionally, or spiritually, in fact that one decision nearly destroyed my life. It is the court's obligation to hear all the facts, even those that are contrary to the "voices of power."

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[000180]

AFFIDAVIT

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The State of California

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Elizabeth Campbell

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Tell approximately when and where your abortion occurred: I have had multiple all through Planned Parenthood.

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How has your abortion affected you? I suffered from depression, migraine headaches – low self esteem – no self worth – was in an emotionally abusive relationship for 11 years until my divorce. I have a very difficult time trusting

people and have very few friends. Overweight = thin = abortions

Over protective parent to the point of smothering my children.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Not to do it!! The ramifications of the "quick fix" will last with you a lifetime!! The guilt, grief, shame to deal with will be tougher to deal with than continuing w/a pregnancy & going through adoption.

Based on your own experience, what would you tell a court that believes abortion should be legal? This is a very devastating experience and one that the federal system should not continue to keep legalized – too much damage is happening to women with the "legalized procedure."

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[000196]

AFFIDAVIT

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The State of Georgia

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S.C.

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Tell when and where your abortion occurred: April 1994 – Atlanta, GA

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How has your abortion affected you? I was told of the medical ramifications that an abortion could cause – but not the emotional. Intense guilt & depression has plagued me since my abortion until I received "Post Abortion" counseling.

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Based on your own experiences, what would you tell a woman considering an abortion? I would tell her that even though she may not have planned on this child God did. I would pray with her & urge her to give her baby a chance at life – a chance that I denied my child.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell them that life begins at conception and not birth. If I was only carrying a "clump of tissues", why was my heart ripped out after the procedure was performed? Every thread of my being deep down within my self was telling me I had just murdered my *child*.

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[000197]

AFFIDAVIT

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The State of TEXAS

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D.K.C.

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Tell when and where your abortion occurred: AUSTIN, TEXAS

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How has your abortion affected you? I HEARD BABIES CRYING AND HAD A REOCCURING DREAM FOR A LITTLE MORE THAN A YEAR. I WOULDN'T INTERACT WITH ANY MAN FOR QUITE A WHILE.

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Based on your own experiences, what would you tell a woman considering an abortion? GET HELP – OUTSIDE OF YOUR FAMILY – FOR YOURSELF AND YOUR FAMILY. SEEK CHRISTIAN GUIDANCE – MAKE SURE YOU HAVE ALL THE INFORMATION ON ALL OF YOUR OPTIONS!

Based on your own experience, what would you tell a court that believes abortion should be legal? THAT BABIES BLOOD IS AS MUCH ON THEIR HANDS AS IT IS MY OWN! I WOULDN'T HAVE CONSIDERED ANYTHING ILLEGAL.

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[000205]

AFFIDAVIT

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The State of Indiana

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P.C.

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Tell when and where your abortion occurred: (4 abortions) 1974, 1978, 1981, 1985, Planned Parenthood Pomona, Calif.

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How has your abortion affected you? Today I am married to my 2nd husband. A marriage brought together by God

(we lived 2000 miles apart when we met and courted) I believe due to my actions, it is the sole reason that today I cannot have children. On my 2 year anniversary I was in the hospital having a total hysterectomy.

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Based on your own experiences, what would you tell a woman considering an abortion? Listen to her inner self. Deep inside when I was pregnant I did want to have my baby I would tell her – OVERCOME FEAR of the unknown and replace her fear with faith GET support! GET TO KNOW GOD

Based on your own experience, what would you tell a court that believes abortion should be legal? I would ask WHY? WHAT DO THEY GAIN FROM LEGALIZING ABORTION MONEY??? I WOULD ASK THEM TO WATCH A VIDEO OF A FETUS experiencing abortion and then ask them to imagine that was their daughter or son or grandchild they just "illiminated" and it was their daughter on that table.

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[000204]

AFFIDAVIT

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The State of Mississippi

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Wendy Chesnut

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Tell approximately when and where your abortion occurred: 2/84, Santa Cruz, California

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How has your abortion affected you? I realized several years later what a huge mistake it was at the time I was very sad, but had noone to discuss it with, so I didn't face it at all. I remained very disconnected from the event in my life. Once I took responsibility for killing my baby – and actually began to think of the "pregnancy" as a baby I was able to move on. Now I have great compassion for women in an unplanned pregnancy & want to be sure they truly have all the facts in order to have a true choice.

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Based on your own experiences, what would you tell a woman considering an abortion? I would tell her factual information about her baby & its developement. I would tell her she most likely will regret an abortion decision either right away or in the future. I would give her all of her options.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell them that regardless of what the law is – women do not receive full information in order to make a "choice." I would tell them that the $$ made in the abortion clinics is what the "choice" people are really after. I would tell them that statistics show & prove that abortion hurts women. I would tell them the pregnant in the first place not – murder as an after thought to hide the mistakes made.

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[000233]

AFFIDAVIT

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The State of California

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Amy M. Childers

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Tell approximately when and where your abortion occurred: Vallejo California, (1) Kaiser (2) Planned Parenthood.

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How has your abortion affected you? TORMENT – I could not forsee the horrible consequences in my life, my heart, my emotions, and my childs life. I feel like I assisted in murder of someone innocent and was never held responsible. I was treated as if this was a simple tooth extraction. As if I had no face nor did my unborn child. The guilt and depth of the loss I have experienced is unexpressable. I have reached some healing but I'm never able to totally recieve rest inside. My daughter asks "why don't I have any brothers or sisters and when will I?" These things stir up my pain. The loss is great and undeniable.

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Based on your own experiences, what would you tell a woman considering an abortion? The truth – maybe you can't see or imagine what will happen in an abortion – But you can literally feel your child torn into death from your heart. If you deny these feelings in the beginning this will be an emotional burden heavier than raising a child.

Based on your own experience, what would you tell a court that believes abortion should be legal? Murder is illegal so

why if a woman births a premature child at 24 weeks gestation – why do we fight to save the baby's life and call it a child if at the same time we can dismember a baby in the womb of the same gestation? Women are ill informed of the emotional consequences of abortion.

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[000234]

AFFIDAVIT

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The State of Colorado

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B.C.

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Tell approximately when and where your abortion occurred: Dec 10, 1980/Vail, Colorado

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How has your abortion affected you? Post trauma with depression, anger, guilt, despair, and infection. I would be lost as a murdurer without hope if the Lord had not forgiven & loved me I would have taken my own life. I will spend the rest of my life helping women understand the truth about abortion and support them in their unplanned pregnancy

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Based on your own experiences, what would you tell a woman considering an abortion? It isn't the easy fix they

say it is. God will make a way where there seems to be no way. I will help you in any way I can to have your baby, a special child for the world.

Based on your own experience, what would you tell a court that believes abortion should be legal? Please stop the murder of the future citizens of our country. Life is precious and death of my child is not reversable. Our future is our children.

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[000235]

AFFIDAVIT

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The State of Washington

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Elizabeth Cleigh

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[000241]

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I had an abortion in March 1982, at a Planned Parenthood abortion clinic in Hollywood, California.

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Immediately after the abortion I felt a sense of relief. But because I have had a lifetime of "stuffing" my emotions I had no awareness of the serious trauma that [000242] had just occurred. I had just committed murder. Even though my mind could not accept that my spirit and body knew exactly what had just happened, and they did every thing they could to get ~~through~~ me to see the truth. God places a

conscience in each one of us whether we choose to submit to it or not. And I had chosen not to see the truth.

* * *

I would tell a woman seeking abortion to not even go near a Planned Parenthood Clinic. They DO NOT GIVE YOU A CHOICE!!! To seek help at a Crisis Pregnancy Center where they can truly give you a wide range of choices and options and support along every step of the way. You may not experience any affects from the abortion right away but the pain is still there whether you want to confront it or not and your day will come like mind did whether its here on earth or when you have taken your last breath and face your Heavenly Father to give an accounting of your life. **You will eventually one way or another face the truth about your abortion!**

I have pondered greatly over this question. I believe abortion should not be considered a RIGHT. It is what it is, murder. I believe abortion cannot be abolished unless it is fully recognized as murder on all levels of society and if CHOICE in the fullest extent of the word is established in medical clinics; and pregnancy and LIFE support is offered rather than bondage and death. Pregnant teens and women aren't given a choice when they enter a Planned Parenthood Clinic. Their only option is abortion! One does not have to look far to see what the original intention of Planned Parenthood was and still is, it has never been to empower women but to demean them, especially women of color. The original [000243] intention was to legalize genocide, to eliminate blacks and other minorities from our culture! But now that our culture is brainwashed to think abortion is a Right of all women, it

will never be outlawed. If the Black women of America knew the truth they would be outraged.

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[000244]

AFFIDAVIT

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The State of Texas

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Terrie Coleman

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Tell approximately when and where your abortion occurred: October 1978, Fort Worth, TX @ a Planned Parenthood Clinic

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How has your abortion affected you? My abortion so traumatized me that it was 10 years before I could even talk about it. Now – 23 years later – I cannot even think about what an awful thing I did to my own baby without crying. I have been severely depressed at times & often overwhelmed with guilt and fear. It has always been a struggle for me to not think that God would "take" my other children as punishment for what I had done to that first baby.

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Based on your own experiences, what would you tell a woman considering an abortion? Planned Parenthood does *not* tell you exactly what you are doing to an unborn baby. They NEVER suggest to you the possible emotional scars

this leaves. I can tell you from experience, this is *not* a painless way out of a "bad" situation.

Based on your own experience, what would you tell a court that believes abortion should be legal? Killing an innocent unborn baby to hide the deeds of his/her parents should ***never*** be a choice, an option. To allow people to profit by the murder of innocent, unborn children for the sake of "convenience" is shameful and should be outlawed.

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[000247]

AFFIDAVIT

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The State of Alabama

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RAC

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Tell when and where your abortion occurred: San Antonio, TX 1984.

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How has your abortion affected you? Severe depression, crying I don't want to be around babies because I am ashamed of what I did.

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Based on your own experiences, what would you tell a woman considering an abortion? I would tell her the hell I have been through and that they people who represent the clinics either lie or withold the truth to complete the abortion & they don't care about her or the baby.

Based on your own experience, what would you tell a court that believes abortion should be legal? They are wrong life begins upon conception and it it wrong to change the definition of conception to suit their own agenda. They are the first in the chain of killers

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[000261]

AFFIDAVIT

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The State of Kentucky

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Nicole W. Cooley

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Tell when and where your abortion occurred: April 15/16, 1994 in Washington DC. I believe the name of the clinic was "Washington Surgi-Center" – it has since closed.

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How has your abortion affected you? Gyn/ob exams are extremely stressful – painful as well for years. Marital intimacy difficult. Difficulty in childbirth. Frequent insomnia. Abortion compounded the pain of my rape making healing much more difficult.

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Based on your own experiences, what would you tell a woman thinking of having an abortion? Abortion is so devastating that I would never do it again – even at the cost of my own life. The abortion procedure is inhumane – pets

are treated far better. This is a decision you will live with the rest of your life – make a choice you won't regret.

Based on your own experience, what would you tell a court that believes abortion should be legal? Abortion doesn't "protect" women – it destroys them by allowing them to go against their inherent nature (to protect children). By keeping abortion legal, women are duped into believing it is safe, morally permissable and inevitable. Abortion is none of these – it is emotionally/physically destructive, immoral, and in the long run, the harder "choice."

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[000271]

AFFIDAVIT

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The State of MS

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L M C

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Tell when and where your abortion occurred: Memphis, TN

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How has your abortion affected you? I experienced depression, crying for unknown reasons, suicidal thoughts.

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Based on your own experiences, what would you tell a woman considering an abortion? It may seem right at the time or the only thing you can do, or it is okay or you're right but the emotional pain you will feel later will be unbearable.

Based on your own experience, what would you tell a court that believes abortion should be legal? That women deserve to know the truth! That abortion kills babies, that it hurts women physically & emotionally! That it does not end when you leave the clinic. There is such a thing as Post Abortion Syndrome and I had it. I wonder how many women have tried to commit suicide over their abortion. I wonder how many have succeeded! Most of all I wonder if you even care!

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[000296]

AFFIDAVIT

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The State of ARKANSAS

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M A C

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Tell approximately when and where your abortion occurred: in 1983 Beaumont, Texas Womens Care Clinic

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How has your abortion affected you? Emotionally – Physically. I was 25 when I had my abortion. I'm 42 now and there is not a day goes by I don't think about how I murdered my baby.

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Based on your own experiences, what would you tell a woman thinking about an abortion? If you ever want to have more than one child, if you want to save your sanity, there is

a lot of pain and blood, unbelievable pain, depression, grief! Lots of grief.

Based on your own experience, what would you tell a court that believes abortion should be legal? Go have one! if you want a nation of emotionally, physically, disturbed women go ahead. I'm pleading with you please stop this butchering of women and their baby's. Because of this procedure, I cannot have anymore children. I thank god I have one son.

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M A C

[000315]

AFFIDAVIT

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The State of Texas

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Terry Daly

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Tell when and where your abortion occurred: Lakewood, Colorado May, 1980

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How has your abortion affected you? I wanted to replace the baby (get pregnant again) right after my abortion. I have gone through several deep depressions. It caused problems in my marriage and my relationship with my mother.

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Based on your own experiences, what would you tell a woman considering an abortion? Think of yourself holding a precious innocent newborn baby. Someone snatched it from

you and murdered it in front of you. You would be mortified. That is how you are going to feel after your abortion. Only you are the murderer. The sickening guilt is unbelievable!

Based on your own experience, what would you tell a court that believes abortion should be legal? Now that we have the technology to see inside the womb, and we know beyond a doubt that we are indeed stopping a beating heart, how can we continue to allow this avenue of murder to be legal.

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[000328]

AFFIDAVIT

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The State of New Mexico

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Tell approximately when and where your abortion occurred: 1976 Santa Fe, NM

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How has your abortion affected you? Once I was married, I became pregnant and had overwhelming guilt. I was sure I'd loose my baby as a punishment for aborting my first baby. Even now I am ashamed and angry that I was not fully informed. I don't believe my parents were fully informed either. I often wonder if it was a boy or girl.

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Based on your own experiences, what would you tell a woman considering an abortion? To research what she's doing. It is a dangerous surgical procedure for her that can lead to an increased risk in breast cancer. She needs to look at ultrasounds of developing babies. They are humans; with human baby attributes. At some point you will feel guilty of murder

Based on your own experience, what would you tell a court that believes abortion should be legal? That it's murder. It's the destruction of a human life. In ancient Roman history the unwanted babies in jars to die & leave them outside. It's a horrid time in our history. How are we any different? We leave our unwanted babies in buckets & dumpsters. It's still infantacide. I'm a nurse and I have to have informed consent for procedures. I know young girls are not giving informed consent.

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[000346]

AFFIDAVIT

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The State of North Carolina

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Cheryl A. Derstine

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Tell approximately when and where your abortion occurred: 1981 I was 16 yrs. old. The abortion occurred at a women's clinic in Allentown Pennsylvania.

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How has your abortion affected you? I became physically ill shortly after my abortion with severe back and abdominal pain, high fever and seizures. Emotionally and spiritually it destroyed my life and took 21 years for me to be emotionally and spiritually healed.

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Based on your own experiences, what would you tell a woman considering an abortion? Please don't have an abortion. Abortion is the exact opposite of what women were and are created to do. Motherhood is not a curse but living in unforgiveness and pain from aborting your own baby is.

Based on your own experience, what would you tell a court that believes abortion should be legal? Abortion is murder. Somehow along the way we've been told at conception and the early weeks its not really life – not really a baby – that simply not true. At conception THERE IS LIFE. PRO CHOICE IS PRO DEATH. Murder is not accepted in a court room – murder is an act of a criminal , so . . . abortion needs to be outlawed.

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[000367]

AFFIDAVIT

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The State of Texas

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Shawn Doctor

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Tell when and where your abortion occurred: At New Women's Clinic (San Pedro Rd) in San Antonio –I believe it was Wednesday the first week in July 1988.

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How has your abortion affected you? depression, loss of self-esteem (which eventually led to an eating disorder), before redemption in Christ – constant (almost daily) thought about the tragic manner in which my baby was killed, and extreme guilt.

* * *

Based on your own experiences, what would you tell a woman thinking of having an abortion? Don't do it. It will be the worst mistake in your life. As difficult and painful as your situation may be nothing compares to the agony of killing you child. Don't ignore the subtle voice from within that tells you it's wrong. That is the voice of God pleading with you to keep your child alive.

Based on your own experience, what would you tell a court that believes abortion should be legal? This so-called choice should never even be an option. The law tells us that we MUST wear seat belts, yet we can murder our babies within our very womb? Something is tragically wrong with our society. If abortion was illegal in 1988, there would be another happy twelve year old living today!

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[000373]

AFFIDAVIT

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The State of New Jersey

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Teresa Dziadal

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Tell approximately when and where your abortion occurred: Hackensack Medical Cntr August 4, 1988

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How has your abortion affected you? It replays in my mind 24 hrs a day. Seeing children, pregnant women hurts. I've lost my best friend because of my child. I don't trust doctors (being a diabetic that's rough) I don't trust hospitals. I cry every day. I have no forgiveness for myself – I feel that I should have been able to stop them – since telling them to stop didn't matter

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Based on your own experiences, what would you tell a woman considering an abortion? That it's a child that's being terminated, not a pregnancy. That there are alternatives to having an abortion and that a man's rights should never outweigh a woman's rights. Proabortionists usually have never had to suffer one themselves.

Based on your own experience, what would you tell a court that believes abortion should be legal? I was always a firm believer in a woman's rights -- until I found out the hard way that pro choice only means proabortion. It should be

proabortion and anti-abortion; not prochoice vs. pro life. No one cared about my choice, no one cared by my rights.

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[000393]

AFFIDAVIT

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The State of Texas

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Dawn M. Erickson

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Tell approximately when and where your abortion occurred: Spring 1974, El Paso, TX Piedres St.

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How has your abortion affected you? For 26 years I never talked about my abortion even when abortion was brought up in conversation. For most of my adult life and late teens I abused alcohol, and for 10 years I was addicted to drugs, and I believe I took these actions to try and kill the pain of my secret murder of my child by abortion. My choices in my social life were not very picky because I tried to fill my pain with what I thought was love and it turned out to be lust, and the men left or I left due to physical abuse. At the age of 23 I gave a son up for adoption because I was so messed up. I couldn't raise him, and at 33 I kept my son. None of these events could replace the pain of the loss of my child.

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Based on your own experiences, what would you tell a woman considering an abortion? Abortion is murder. It is something you cannot ever undo. This could be your only child. If they were parents and they have children, and if they had to chose which child they would kill, what niece or nephew would they kill? It's a baby.

Based on your own experience, what would you tell a court that believes abortion should be legal? God creates life in the womb, and abortion is an act against God. Educate by telling details of some techniques of abortion. Abortion is not just a physical operation with risks . . . even death, but it can affect a woman emotionally and psychologically for years and even for life.

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[000410]

AFFIDAVIT

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The State of Arkansas

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Jerrell Ann Farmer

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Tell approximately when and where your abortion occurred: Los Angeles California

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How has your abortion affected you? I am 47 years old. I have only been pregnant once since my abortion and I had a miscarriage. How sad – I would have been a great mom. I often think of how old my child would be. I believe my baby

was a boy. I wonder what he would have become. I think of how close we could have been. It is a profound loss.

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Based on your own experiences, what would you tell a woman considering an abortion? There are other options. Better options. Ones that leave you healthy physically and emotionally. Options that do not leave you searching for a means of redemption.

Based on your own experience, what would you tell a court that believes abortion should be legal? Killing is a crime and we need to get our heads out of the sand. A fetus is an unborn child at any stage. To believe different is to believe a lie. All human life is created in his image. No court has the authority to say different and not suffer the consequences as a Nation.

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[000419]

AFFIDAVIT

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The State of California

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K.G.

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Tell approximately when and where your abortion occurred: April 25, 1994/Dr Ryan Anderson's office in Danville, CA

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How has your abortion affected you? It was almost nine years ago and there is not a day that goes by that I don't

think about it. About a month after, I started having severe panic attacks because I felt like something bad would happen to me because I did something so horrible. With the birth of each of my three children, I suffer from extreme guilt and sadness about the baby that I didn't give a chance at life.

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Based on your own experiences, what would you tell a woman considering an abortion? I would tell them that life begins at conception. If they are young like I was there are options like adoption or people that will help you take care of the baby. mostly I would stress that it was a BABY not a blob, or cells, or product of conception like I was told.

Based on your own experience, what would you tell a court that believes abortion should be legal? Something that involves taking the life of a child to be legal is absolutely crazy. God gives us our children, it is not up to us which ones stay and which ones go. It is up to him. How sad it is for all of the babies that God wanted to give life to and they were destroyed. Secondly, the mothers can suffer for the rest of their life.

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[000474]

AFFIDAVIT

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The State of Texas

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Janice L. Gilliland

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Tell approximately when and where your abortion occurred: Salinas, CA –Planned Parenthood 1986 Spring or Summer

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How has your abortion affected you? I feel this abortion affected me physically, mentally and emotionally. I was already the mother of 3 children and believed in life and loved being pregnant. Because of the fear I lived under perpetrated by my ex-husband, I chose to have the abortion to avoid anymore of his wrath and terror. This abortion has affected me emotionally to this day, as I am still dealing with the loss. My health also deteriorated afterwards.

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Based on your own experiences, what would you tell a woman considering an abortion? Never, never take the life of your child, because you'll always wonder what is it's potential would have been and you'll always live with the guilt and sadness of it. At least with the option of adoption, you chose life for your child and opportunity.

Based on your own experience, what would you tell a court that believes abortion should be legal? That, even at 8 weeks when I had my abortion, I new there was life in me. That making murder legal still does not make it right. Abortion is a legal convenience that is not worth the consequences; physically, emotionally, or mentally.

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[000487]

AFFIDAVIT

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The State of MN

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Beverly A. Green

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Tell approximately when and where your abortion occurred: Feb. 1979 Meadowbrook, St. Louis Park

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How has your abortion affected you? I went into a black tunnel for years. Started using drugs, drinking, more promiscuity, very insecure, hated myself – the list goes on. . . .

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Based on your own experiences, what would you tell a woman considering an abortion? It's not a quick and easy solution. Don't do it! It will haunt you the rest of your life. Two wrongs won't make a right. They don't tell you how awful it is and that you will forever morn the loss of your baby.

Based on your own experience, what would you tell a court that believes abortion should be legal? It's not the "illegal" abortions that hurt women – it's abortion. Our constitution should protect the rights of all people – born, old and unborn. Harry Blackman himself stated that they would have a hard time getting the law for abortion if it were proven that the fetus is actually a baby – well in this day and age – that's a "no brainer!"

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[000508]

AFFIDAVIT

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The State of NC

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Gwen E. Gregory

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Tell approximately when and where your abortion occurred: 1978 or 1979 – Ft. Myers, FL

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How has your abortion affected you? Years of guilt, mental and emotional distress. Fears if I could have a normal child. Especially during my 2 subsequent pregnancies, keeping it silent from family and friends, shame

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Based on your own experiences, what would you tell a woman considering an abortion? Not to do it. Look for alternatives. Raise yourself, adoption assistance

Based on your own experience, what would you tell a court that believes abortion should be legal? It is taking a life. It can affect you the rest of your life. There are alternatives.It is too easy a choice, uninformed, under pressure it is very painful process.

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[000514]

AFFIDAVIT

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The State of Florida

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R.G.

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Tell approximately when and where your abortion occurred: Delaware County, PA 1987 and 1989

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How has your abortion affected you? For years afterward I suffered from unexplained guilt and shame. I could not except what I had done and wished I could have the opportunity to change my decision. I would cry over the loss. And it is so difficult to heal because even though "Choice" is excepted, to have had an abortion is tabu. How can that be? Thankfully I finally found peace thru God's love & foregiveness.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Even though it seems like an easy out, the pain will be with you for the rest of your life.

Based on your own experience, what would you tell a court that believes abortion should be legal? It is murder pain and simple. Without the fetus there would not be a human life. No one should be allowed to murder anyone, especially out of convenience of choice. Life is valuable.

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[000521]

AFFIDAVIT

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The State of Tennessee

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M H

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Tell approximately when and where your abortion occurred: 1989 – Planned Parenthood Nashville, TN 1990 – Dr. Jill Chambers Nashville, TN

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How has your abortion affected you? I had 10 years of depression, anxiety, and panic attacks that I had trouble understanding. I did not understand what was causing me to be literally ill. I eventually learned of Post-Abortion Syndrome. I was apprehensive at first but agreed to see a councelor. Through this process I discovered that I was so full of guilt, shame, regret, unforgiveness, and sadness that I will unable to cope with day to day life. Those 10 years of my life were spent in anguish due to a decision that I had made based upon mis information and untruths.

Based on your own experiences, what would you tell a woman considering an abortion? I would make sure that she understood the facts of abortion and the procedures used and I would make sure she understood the risks involved physically and mentally. I would make sure she understood that there is such a thing as Post Abortion Syndrome and what that means for her. I would share my story with her.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell the court what my experience with abortion has been like and explain to them that I made a decision without understanding truth. I would hope that my story would help explain to them what the effects of abortion can do to a person both physically and mentally. Not to mention what it does to an unborn child. It is amazing to me that such a clearly immoral and dangerous procedure could actually be permitted. The well being of so many is in jeopardy everytime a "choice" is made.

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[000529]

AFFIDAVIT

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The State of California

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N. E. H.

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Tell when and where your abortion occurred: Los Angeles January, 1971 UCLA referred me to a clinic in Valley

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How has your abortion affected you? realized I had done something deeply wrong – have gone to confession, gotten counseling (post-abortive) but the hardest part is forgiving yourself

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Based on your own experiences, what would you tell a woman considering an abortion? get all the facts – including the positives on choosing life & how women regret abortion but they don't regret having children. If you really can't parent there are plenty of people crying for the opportunity.

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Based on your own experience, what would you tell a court that believes abortion should be legal? If you understood a fraction of the pain & suffering abortion is causing women (& this society) *and* men you'd have to rethink this "right". Also consider the rights of the 4,000 daily who are denied life

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[000547]

AFFIDAVIT

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The State of Oregon

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Tinya E. Harper

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Tell when and where your abortion occurred: Tucson Medical Center – Tucson, AZ March 1976

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How has your abortion affected you? I experienced many years of guilt and sadness, and longing for my child, as I learned exactly what abortion is, the taking of a human

life. My child would be 26 yrs old. Because it was legalized, I thought it was O.K.

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Based on your own experiences, what would you tell a woman considering an abortion? That if your pregnant have the baby, you can do it, you will never regret. If you go through an abortion, as you realize it was your baby, you will always hurt, and regret.

Based on your own experience, what would you tell a court that believes abortion should be legal? Just because it is legal doesn't mean it is O.K. and safe. A woman has a choice to be with a man, or not, a choice to have sex, or not, and a choice to use birth control (like condoms, etc.) after that its not a choice it's a child, abortion is murder.

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[000551]

AFFIDAVIT

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The State of Arizona

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Karen Ruth Hartman

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Tell when and where your abortion occurred: Nov. 12, 1988 – York, PA

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How has your abortion affected you? First, I experience relief, then deep grief, guilt, nightmares, anger, saddness,

a feeling of worthlessness, depression, crying. I felt alone and lonely, for I could tell no one. I was silent, but wanted to speak out, but who would listen after all it was my choice. Who would understand. Only through God's love did I find relief.

Based on your own experiences, what would you tell a woman considering an abortion? I would inform her about the 'TRUTH' of abortion. The emotional, consequences & the physical. Plus that the life within her is a baby, abortion kills that life, nothing will bring that life back if abortion is chosen.

Based on your own experience, what would you tell a court that believes abortion should be legal? I chose abortion not because I wanted to end a life, rather in my mind during this crisis I kept thinking "It's legal, it must be okay." If it was illegal I would not have considered it nor would that option been considered by myself or my husband.

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[000562]

AFFIDAVIT

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The State of CO

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S H

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Tell when and where your abortion occurred: Fall (Oct) 1978 – Mpls, MN

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How has your abortion affected you? Following the abortion I became severely depressed, self destructive and suicidal. The guilt from my decision overwhelmed me. I now have an educated opinion of abortion and have a heart for women facing unplanned pregnancies.

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Based on your own experiences, what would you tell a woman considering an abortion? I would share my own experience with abortion, tell her that I know she is scared & at a major turning point in her life but that an abortion is not in her's or her child's best interest.

Based on your own experience, what would you tell a court that believes abortion should be legal? That abortion is not just a word, this is a living human being at risk of being surgically removed from the womb limb by limb. This person has a right to life like any others. We as human beings are *not* God & should not have the right to decide whether another should live or die.

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[000575]

AFFIDAVIT

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The State of Texas

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Dianne L. Hensley

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Tell when and where your abortion occurred: 10-31-72: Presbyterian Hospital, Albuquerque, NM

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How has your abortion affected you? For ten years I didn't think it had had any impact. However, w/ hindsight, I am sure it contributed to the breakup of the marriage & to a very self-destructive cycle of behavior for several years following.

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Based on your own experiences, what would you tell a woman considering an abortion? Don't – your life has already been changed forever, your choice is how, not if, you will be changed forever. Had I not found forgiveness in Christ & a constructive use for the experience, I'm not sure I could carry the burden.

Based on your own experience, what would you tell a court that believes abortion should be legal? I believe the meltdown of our culture – kids killing kids, etc. – is directly related to the message we send by legalizing abortion on demand. Our civilization depends on re-establishing a respect for life.

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[000587]

AFFIDAVIT

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The State of Florida

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K. M. H

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Tell approximately when and where your abortion occurred: 1979 San Diego CA 1982 OHIO

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How has your abortion affected you? I terribly regret it. The guilt I have sometimes is unbearable. I consider it the biggest mistake of my life. I can't begin to explain the heartache I have when I think of my other children that I never got to know. I have a grandson now and the heartache is even worse – I'm thankful for a merciful forgiving God – without Him I couldn't live with myself.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Please don't!! Find any other alternative – Its something you have to live with for the rest of your life! And it hurts!!

Based on your own experience, what would you tell a court that believes abortion should be legal? Abortion is murder – And *no one* has the right to take the life of another. If abortion clinics were not available I never would have killed my children – its just too easy.

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[000599]

AFFIDAVIT

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The State of Georgia

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Melissa Hodges

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Tell approximately when and where your abortion occurred: Atlanta, GA July 27, 1976

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How has your abortion affected you? I was 16 at the time and thought it would end that day. It changed the way I felt about myself. My self esteem crumbled which affected the choices I subsequently made. My boyfriend went on his own way which compounded my self worth. I started drinking, did not choose college which I had always planned to do, and it affected my future choice in partners. It ultimately cost me my marriage many years later.

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Based on your own experiences, what would you tell a woman considering an abortion? Run the otherway! Abortion destroys 2 lives – one is definitely the child, but the mother dies slowly from the inside out as she(me) struggles to deal with the pain of the loss, grief, despair, and intense sadness over the choice to abort.

Based on your own experience, what would you tell a court that believes abortion should be legal? Like Satan convinced Adam & Eve that eating the fruit was okay and they bought the lie, as a nation, so have we. My child had a beating heart and since I'm a human – the child was human; therefore my choice stopped that beating heart.

Taking a life regardless of its location is wrong – inherently wrong; The child's pain is over in a short time. Mothers continue to suffer for a lifetime, and like cancer, invades all areas of relationships with others & her own well being.

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[000600]

AFFIDAVIT

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The State of Virginia

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B H

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Tell approximately when and where your abortion occurred: Late January of 2000 at The Womens Clinic on the Boulivard in Richmond

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How has your abortion affected you? It has crushed me with depression, remorse and guilt. I am unable to forgive myself and it is hard for me to believe that God can forgive me. I have a 10 month old child now and every day I spend with her, I hate the fact that I killed my helpless, defensless baby. I live in constant fear that my daughter will be taken from me somehow because I don't deserve a child after what I did. I can't sleep. I have nightmares frequently about my aborted child. I feel loss. I feel I don't deserve anything.

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Based on your own experiences, what would you tell a woman considering an abortion? Your unborn baby deserves a *chance*. A chance to take its first breath to laugh, to love. A child brings joy! Even if you give him/her up for adoption. It will have a chance at life and you will *know* you did the *right* thing w/no regrets. The pain of killing your baby will weigh on you unmercifully forever.

Based on your own experience, what would you tell a court that believes abortion should be legal? I wish with *all my heart* that abortion had been illegal. I would have my child and not all this pain & suffering every day. There is *no* way to know the pain until after you have done the undo-able

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[000611]

AFFIDAVIT

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The State of California

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Deborah C. Howard

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Tell approximately when and where your abortion occurred: 5-1973 San Joaquin Hospital Bakersfield CA

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How has your abortion affected you? Has left me with much regret, however God has forgiven me and I know I will see this child in heaven in 1973 there was no education on life & conception. I honestly thought it was a thing, not a child. If I had known the truth, I would not have

done it. I became very ill for several weeks after & depressed, even though I did not even know the truth

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Based on your own experiences, what would you tell a woman considering an abortion? Not an option this is a human being from conception

Based on your own experience, what would you tell a court that believes abortion should be legal? Look at science, it proves this is a human being. The fact that it is in the woman does not change the truth. It is murder & something better change for the sake of the babies, mothers & this United States.

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[000626]

AFFIDAVIT

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The State of Georgia

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Lynn C. Hurley

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Tell when and where your abortion occurred: Augusta, GA – November 26, 1977 – at a clinic located directly across the street from the Medical College of Georgia.

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How has your abortion affected you? Emotionally & spiritually. 17 years I carried a heavy load of emotional pain, shame & guilt. I was so afraid someone might find out what I had done. I drank & smoked pot to mask emotional pain.

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Based on your own experiences, what would you tell a woman considering an abortion? The guilt, pain, shame, emotional numbing, etc. are much worse and last far longer than the embarrassment you may feel as an unwed mother pregnant for just 9 mos. Give your baby life and you can look back many years from now knowing you did the right thing.

Based on your own experience, what would you tell a court that believes abortion should be legal? It is never OK for a mother to kill her child, no matter what age that child is. In an abortion, not only is a child killed, but a mother is walking around wounded, and will carry the scar for the rest of her life.

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[000642]

AFFIDAVIT

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The State of Texas

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E K. J.

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Tell approximately when and where your abortion occurred: San Antonio.

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How has your abortion affected you? For many years I struggled with tremendous guilt and depression over what I had done. I had realized that I had killed my child. As I went through 5 years of infertility before having my daughter, I wondered if perhaps something had happened during my abortion which would not allow me to ever have children.

The day of the abortion stands out as the loneliest, most grief-filled day I had ever known.

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Based on your own experiences, what would you tell a woman considering an abortion? Women must know that the decision to have an ~~aborit~~ abortion is also a lifelong decision. It is not a quick fix and then done. They must know they are ending a life.

Based on your own experience, what would you tell a court that believes abortion should be legal? That if abortion – or the right to choose – is such a positive act for women, then why are so many women in pain over such a decision? Why are women ashamed, remorseful after having an abortion? Why aren't women told the truth about the aftermath of abortion?

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[000670]

AFFIDAVIT

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The State of Mississippi

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Melinda L. James

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Tell when and where your abortion occurred: September 25, 1990 Jackson, MS

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How has your abortion affected you? I have been afflicted by calamity, grief, and sorrow. My nerves were wracked, my heart broken. My baby cannot grieve or feel sorrow. It is dead. The first time I felt it move was the last time I felt it move. Anti-abortion demonstrators chanted outside the clinic, screaming "don't kill your baby" throughout the whole hellish time. I felt I was trapped in a nightmare. It recurs. Please don't let this happen to any more humans. It is so wrong; it is so painful.

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Based on your own experiences, what would you tell a woman considering an abortion? First of all, repent. Receive Jesus Christ as your Savior! Then fall on your face in worship and praise and call the Holy Spirit to protect you both from the ravening wolves that do seek to devour and destroy you both. Study the Bible daily. Don't even allow the "A" word to run through your mind as an option.

Based on your own experience, what would you tell a court that believes abortion should be legal? I stand as a living example that abortion is destructive to all people involved – especially the child, the mother, and the rest of each

family. Abortion should not be allowed or condoned in any free society. Abortion is an abomination to our Creator and to all creation. Abortion should be illegal at the very least! Just say no. It's on you now.

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[000671]

AFFIDAVIT

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The State of California

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Patricia A. Johnson

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Tell when and where your abortion occurred: Thursday, April 26, 1973, L.A. County, CA

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How has your abortion affected you? "Extreme trauma", "Ruined" my life, the most horrible guilt – these are all things I have felt at times through my life. Basically, I have suffered a very great loss – my own dear child. I regret it more than anything I've ever done. Great remorse and sorrow. It changes you forever. I miss him. He'd be 27 yrs. old.

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Based on your own experiences, what would you tell a woman considering an abortion? I would tell her not to do it and why not. I would share my own personal life story. I would present all available information on pre-born babies

from the day of conception, Read her Psalm 139, give her all information on Post Abortion Syndrome.

Based on your own experience, what would you tell a court that believes abortion should be legal? Post Abortion Syndrome can cause mental & emotional torment, as it did in my case. Prove to them that P.A.S. is REAL! I would show them pictures and videos of pre-born babies at every stage and what is happening at every stage. I would share my pain and grief – it is real. It's murder and it's illogical to treat the pregnancy with the unwritten rule, "If I want it it's a baby, if I don't, then it's not a baby.

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[000686]

AFFIDAVIT

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The State of Pennsylvania

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Kelly L. Kelchner

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Tell approximately when and where your abortion occurred: 4-29-87 Ralph P. Caschetta, M.D. 1561 Long Pond Rd. Rochester New York 14626

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How has your abortion affected you? Afterwards I became self destructive drinking heavily & doing drugs to try and forget what I had done. I got involved in many relationships with men looking for love and fulfillment. I was

riddled with guilt and shame. I wanted to die. I had a hard time keeping jobs afterward, I was lost & confused.

I am greatful to have found healing from my personal relationship with Jesus Christ.

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Based on your own experiences, what would you tell a woman considering an abortion? Don't do it. Killing your own child is a choice you will regret the rest of your life.

Based on your own experience, what would you tell a court that believes abortion should be legal? It did not help me in anyway. I wish I would have never had that choice. Actually it was the only choice planned parenthood gave me. I went for a pregnancy test, found out I was pregnant and they gave me a slip of paper with 3 abortion clinics. That was not really a choice, now was it?

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[000730]

AFFIDAVIT

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The State of Colorado

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Kristen Kelly

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Tell approximately when and where your abortion occurred: January 1989 in Roswell, Georgia

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How has your abortion affected you? I'm 32 years old and will never have children b/c of that abortion. I was very destructive afterwards and now I am married to a man who has children & unable to have more. I feel that I never loved myself enough after that day to think I ever deserved to have children. I am in counseling to deal with this grief. *there is so much more damage – it is hard to recount it all.

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Based on your own experiences, what would you tell a woman considering an abortion? Never to do it, because you grieve the loss of that child EVERYDAY. Even if you are a Christian you also don't think you are good enough to enter heaven, even though Jesus saves us.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell that court that they are killing babies and butchering a mothers soul everytime they allow an abortion to happen.

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[000731]

AFFIDAVIT

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The State of Arizona

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Catherine Kimball

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Tell approximately when and where your abortion occurred: 1. Haleiwa, Hawaii 1971; 2. Santa Barbara Ca 1974

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How has your abortion affected you? 1st abortion: I suffered heavy bleeding & very painful uterine cramping with no medical attention even tho I contacted the doctor for help. 2nd abortion: doctor didn't remove the whole baby during procedure so I was called back in a few days for a subsequent DNC to remove the pieces. After I gave birth to my daughter in 1975 I realized with extreme horror what I had done having abortions. I had been robbed of the joy of motherhood for those two babies whose lives I ended. I still weep for those precious lives lost. I sought forgiveness thru salvation in Jesus Christ & God removed the weight of guilt from my heart.

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Based on your own experiences, what would you tell a woman considering an abortion? Life is too precious. Don't do it. It is murder & will bring guilt. Either keep the baby or put the baby up for adoption. The price is too high. There is help available.

Based on your own experience, what would you tell a court that believes abortion should be legal? I wish Roe vs Wade had never been passed then I never would have suffered from abortion. I was young & didn't realize what I was doing and I believe it is the duty of the courts to pass laws that will help protect its citizens.

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[000744]

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AFFIDAVIT

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The State of California

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S C K

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Tell approximately when and where your abortion occurred: 1973 I was 15 yrs old, Somewhere in Garden Grove, Ca.

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How has your abortion affected you? I became severely depressed afterwards. I know after I had the abortion that what had happened was very wrong. I felt so much guilt and I started drinking very heavily on a daily basis & became a drug addict. I spent the rest of my teenage life living in a haze, I was never sober and I tried to commit suicide. I got clean for a while after getting married and made Jesus my Lord & Saviour yet yrs later I couldn't shake the depression so I started drinking heavy again and I made more suicide attempts. I felt so worthless and I hated what I had become, I would tell myself that I was an accident and that I should have never been born. I am sober now & living for Christ, Through the help of a Christian Counselor I was able to forgive myself & my parents & doctor, I know now that I've been forgiven & will one day see my baby in Heaven.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Please do not kill your baby there are serious consequences and if you are to young please

have your baby and give him or her up for adoption, there are so many couples who desperately want your baby because they can't have any. Please give your baby a future!

Based on your own experience, what would you tell a court that believes abortion should be legal? Abortion is "murder." Abortion not only kills the innocent but it also causes severe and permanent emotional pain for a large majority of women and "I am one of them". "Abortion is just another Hollecust and it must end" May God have mercy on you in that day that you stand before Him!

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[000758]

AFFIDAVIT

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The State of Alabama

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Kathy Madison

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Tell when and where your abortion occurred: 5/29/78 Homewood, Birmingham, Alabama

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How has your abortion affected you? It has almost ruined my life. I have an ongoing deep sadness and huge void in my life that nothing can fill. Deep sense of guilt.

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Based on your own experiences, what would you tell a woman considering an abortion? I would tell her if she cared

about the rest of her life, not to do it, because it would ruin her life and the hurt never goes away.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would have never considered abortion if it had not been legal. My aunt said abortion would not be legal if it was not OK. I was stupid to believe her.

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[000783]

AFFIDAVIT

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The State of California

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Candice Martin

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Tell when and where your abortion occurred: March 1996 San Diego County

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How has your abortion affected you? I have been suicidal, depressed, had extreme anxiety, had nightmares, suffered from greif & self destructive behaviors.

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Based on your own experiences, what would you tell a woman considering an abortion? Not to do it. I would explain that the effects of abortion reach into every aspect of your life and fester, making every plan & dream die along with your child.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell them that I was raped & therefore "justified" in my abortion, but it didn't change a thing. I still suffered because I was led to believe that taking my child's life was ok. It was not & I have been living with that for almost five years.

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[000802]

AFFIDAVIT

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The State of Michigan

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Debra Ann Mays

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Tell approximately when and where your abortion occurred: October 1985 in a Women's clinic in Lansing, MI.

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How has your abortion affected you? Initially I was numb and remained in shock from October 1985 until 1989 and I did anything to feel again; I was fighting with my friends more and lost many of them, I became more sexually active – anything to *feel* again. Then when the hurt surfaced I drank alcohol – anything now to cover the pain. Currently, I have gone through a grieving and healing process and there is still not a day that goes by that I don't regret my decision. It is the deepest loss a woman can ever know.

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Based on your own experiences, what would you tell a woman considering an abortion? Abortion may seem like the right answer now but if it is truly the right answer it will always be right so don't hurry with this decision. Think about the physical consequences, the emotional pain of losing your child and the spiritual death you will go through. This is not the right answer for anyone who wants to experience less pain & more freedom.

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Based on your own experience, what would you tell a court that believes abortion should be legal? If abortion had not been legal I would not have been advised the way I was – My child I killed is named "Amber" and I wish the courts and governments would give as much consideration to saving my child as they do issuing "Amber Alerts" across the country to save children currently living. I would have my child today, in my arms or an adoptive mother who wants children so badly, if abortion wasn't legal.

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[000823]

AFFIDAVIT

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The State of OHIO

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Shannon L. McGuire

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Tell approximately when and where your abortion occurred: 1985, Columbus, Ohio, 1989, Columbus, Ohio 1990, Columbus, Ohio

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How has your abortion affected you? Post-Abortion Syndrome – Almost All Psychological Effects and Had to go through Infertility Treatment to find out I was Physically Fine.

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Based on your own experiences, what would you tell a woman considering an abortion? Never Do It! Give Up your Child for Adoption or Parent! Remain Abstinent and you won't have to deal with the consequences of "Sex Before Marriage."

* * *

Based on your own experience, what would you tell a court that believes abortion should be legal? I have seen and experienced more consequences in my life; and pain that only Someone who has experienced Abortion Can Feel. I will give my testimony any time to prevent more abortions from happening in the U.S.

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[000846]

AFFIDAVIT

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The State of California

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P.B.

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Tell approximately when and where your abortion occurred: December 22, 1977. Pregnancy confirmed at a

Planned Parenthood in Bloomington, Illinois; performed at National Health Care Services, Peoria, IL Case #7717

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How has your abortion affected you? Words can in no way describe the deep, profound loss, guilt, – horror of *knowing* that I *killed my baby*, my very own child, and it is legal! I was at an extremely vulnerable time in my life, in a crisis situation and I wasn't given all the information I needed to make an informed decision. (Such as fetal development & emotional repercussions)

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Based on your own experiences, what would you tell a woman considering an abortion? *Don't do it* – Please! I would give her information – details about the child growing inside her. There isn't a day that goes by that I don't think of the person I let the abortionist kill. *This will haunt me the rest of my life*. I now have 2 biological children living & 1 dead to abortion.

Based on your own experience, what would you tell a court that believes abortion should be legal? The laws *must protect* the women and children in these crisis situations – the courts, the clinics, the doctors all let me down when I most needed true compassion and support. It is the antithesis of compassion to allow and assist a woman in killing her child. It's a person, no matter how large or small, or how young or old!

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[000864]

AFFIDAVIT

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The State of TEXAS

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T M

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Tell approximately when and where your abortion occurred: February, 1973 in a hospital only days after it was legal

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How has your abortion affected you? At first I had deep depression. I was very sorry right away & I knew I would never make that mistake again! I became a Christian a few weeks later & my life turned completely into a new direction. However, I carried a deep loss in my heart. After I married and had children, the loss became even greater because the reality that it had been a "real" baby set in. God has given me a wonderful family & brought healing to my heart, but what I did will always be a reality. I can't un-do or change that wrong decision! I did something very wrong. It was not rightfully my choice. One of my children is missing from my life.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Life is valuable! It is a precious gift. Circumstances change. Children always bring joy & life to us. God has promised provision to those who trust him!

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Based on your own experience, what would you tell a court that believes abortion should be legal? Making it easy, doesn't make it right. If we don't value the life of unborn babies then our society doesn't value life at all. Each one of us was once in our mother's womb. Some of our parents had it rough, they were inconvenienced, too, but they made right choices to be responsible to the gift of life they carried & gave birth!

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[000878]

AFFIDAVIT

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The State of Missouri

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MELANIE L. MILLS

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Tell when and where your abortion occurred: On March 26, 1998, in Granite City, Illinois at Hope Clinic for Women

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How has your abortion affected you? For about six months I was in denial and then I started having emotional problems. I had to attend several counseling sessions, receive post traumatic treatment and extensive psychiatric care and have been hospitalized twice this year for all the emotional distress. I have attempted suicide this year and in June I found out that I have scar tissue and endometriosis.

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Based on your own experiences, what would you tell a woman considering an abortion? Never to have one. It is the worst mistake because you will have to live with it every single day.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell them that it is 1970's thinking. Roe v. Wade needs to be overturned. It is barbaric. It is inhumane. The baby is killed and this should not go on in a democratic society. It exploits women.

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[000882]

AFFIDAVIT

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The State of Tenn.

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Robin Montgomery

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Tell approximately when and where your abortion occurred: 1985 High Point, N.C.

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How has your abortion affected you? For starters I felt so guilty and ashamed I considered myself a murderer and unworthy of life. I became disconnected unable to really extend love or have meaningful successful relationships. There were times when I wished I would just stop breathing. Later when I became pregnant I thought that I would lose that child, I thought that God would punish me for

the first baby by taking the second one. I constantly thought about how the child looked, eye color, smell, complexion.

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Based on your own experiences, what would you tell a woman considering an abortion? I would tell her that the baby would be gone in an instant, but the pain, guilt and absolute torture and anguish will only begin.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell the court that just because man legalizes an act doesn't make that act morally right. I would also remind them that man can never override the power and authority of God!!

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[000910]

AFFIDAVIT

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The State of Tennessee

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M L M

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Tell approximately when and where your abortion occurred: October 1980, Memphis Center for Reproductive Health

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How has your abortion affected you? Since I had my abortion, nothing in my life has gone right. I have suffered

from depression, an ongoing sense of shame, and a tremendous amount of anger due to the fact that I allowed myself to be coerced into having this awful procedure performed. It has also affected my ability to be a proper mother to my children.

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Based on your own experiences, what would you tell a woman considering an abortion? Don't do it. It isn't worth it. You'll regret it as long as you live. Abortion is a permanent solution to a temporary problem.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell the court that abortion is murder and should be outlawed. Roe v. Wade should be overturned.

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[000922]

AFFIDAVIT

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The State of PA

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B G M

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Tell approximately when and where your abortion occurred: May 1982 Hillcrest Abortion Clinic Harrisburg, PA

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How has your abortion affected you? My abortion has contributed to 4 psychiatric hospitalizations. I had such

guilt and shame that I couldn't share with others because it was my dirty secret. It affected my marriage two years later to my aborted child's father. It was an unspoken loss & sin between us that eventually helped ruin our marriage which broke up after 12 years. It has also affected my relationship with my son because I now know that I murdered his sibling through having an abortion. It was the biggest mistake of my life.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Please don't do it. Abortion does not fix things, it makes even more problems and can ruin your emotional/spiritual health.

Based on your own experience, what would you tell a court that believes abortion should be legal? By making abortion legal it makes it appear that killing your unborn child is perfect alright and thus deceives people.

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[000926]

AFFIDAVIT

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The State of Texas

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Camelia M. Murphy

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Tell approximately when and where your abortion occurred: 1972 (Dr. Sidney Knight), 1978 (Dr. Knight), 1980 & 1981 All New Orleans, LA (Delta Women's Clinic)

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How has your abortion affected you? I have suffered with low self esteem, self hatred, suicidal impulses constant anxiety (esp. about sex and about making decisions), marital problems difficulty in bonding with my living children, guilt, shame, difficulty in daily functioning feelings of isolation from others, feelings of inferiority, failure to progress in labor (resulting in 2 c-sections)

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Based on your own experiences, what would you tell a woman considering an abortion? I could tell them "please" not to take the life of their unborn child, that they will regret it for the rest of their life if they do. I would also offer to support her in any way that I'm able.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell the court that the only people who "benefit" from abortion are the abortions providers (in an economic sense) I would tell them that our whole country is suffering from the pain and destruction of abortion, including the unborn children, mothers, fathers, sisters, brothers, grandparents . . . (The list is endless.)

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[000937]

AFFIDAVIT

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The State of Kentucky

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Maranda Music

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Tell approximately when and where your abortion occurred: August 1993, Louisville KY

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How has your abortion affected others in your life? I treated others mean, I did not want to be around my loved ones.

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Based on your own experiences, what would you tell a woman considering an abortion? It's not worth it. By getting an abortion you may think you are helping yourself and solving a problem but your not you are causing more pain and heartache on yourself. You will never be able to forget.

Based on your own experience, what would you tell a court that believes abortion should be legal? Abortion is wrong. Abortion is killing a human being that deserves to live. We all should have the right to live.

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[000942]

AFFIDAVIT

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The State of Pennsylvania

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MARY L. NEIKAM

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Tell when and where your abortion occurred: Winter 1978 at Women's Suburban Clinic, Paoli, PA

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How has your abortion affected you? I suffered from depression, the lack of ability to get close to anyone. I lost perspective on my life and began drinking more. My desire to have a baby increased, I longed for that baby.

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Based on your own experiences, what would you tell a woman considering an abortion? You will be just as much a victim as that baby. The baby is alive & knows who you are you will always grieve for your child even if you don't recognize the symptoms you experience as grief.

Based on your own experience, what would you tell a court that believes abortion should be legal? Abortion is harmful to women; spirit, soul & body (mentally, emotionally & physically. It's not natural for a woman to dispose of her own child. There are long lasting effects.

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[000955]

AFFIDAVIT

The State of Wisconsin

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T.M.N.

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Tell when and where your abortion occurred: PROFFESSIONAL BUILDING IN EAU CLAIRE, WI APPROXIMATELY JANUARY 3, 1985.

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How has your abortion affected you? I REALIZED THE TRUTH BEFORE LEAVING THE ROOM. DEVELOPED MANIC-DEPRESSION, SLEEPING DISORDERS, PANIC DISORDERS OVER NEXT 11 YEARS UNTIL A SEVERE BREAKDOWN INTO CLINICAL DEPRESSION OCT OF 1996, WHICH I DEAL WITH DAILY NOW.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? CONTRARY TO WHAT PRO-CHOICERS CLAIM, THERE ARE MANY PHYSICAL AND PSYCHOLOGICAL RISKS TO ABORTION. I WOULD SHOW DIFFERENT RESOURCES, EXPLAINING WHERE I HAD MANY WOMEN I KNOW COULD BE GROUPED IN. MOST OF ALL, HAVING AN ABORTION IS THE BEGINNING OF LONG-TERM PROBLEMS.

Based on your own experience, what would you tell a court that believes abortion should be legal? BEYOND THE CONSTITUTIONAL PROBLEMS OF "ROE V WADE" AND INFORMATION USED FOR THE DECISION, I COMPARE THIS WITH MEDICINES AND PROCEDURES THAT REQUIRES STUDIES SHOWING IT'S SAFENESS. THERE ARE MANY STUDIES AND WRITINGS SHOWING

LONGTERM NEGATIVE RESULTS, PARTICULARLY PSYCHOLOGICALLY, OF ABORTION THAT ARE BEING IGNORED.

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[000956]

AFFIDAVIT

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The State of North Carolina

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A.C.N.

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Tell when and where your abortion occurred: New Orleans, Louisiana fall 1981

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How has your abortion affected you? My abortion took away my sense of self-worth and self confidence. It has made me question my ability to make competent decisions.

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Based on your own experiences, what would you tell a woman considering an abortion? Do Not Do It!

Based on your own experience, what would you tell a court that believes abortion should be legal? Please make sure a woman knows ALL the options that are available, and is aware of the consequences – physical and mental – that accompanying abortion. The procedure only takes a few minutes, the pain lasts a lifetime.

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[000971]

AFFIDAVIT

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The State of Nevada

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Christian M. Ongley

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Tell approximately when and where your abortion occurred: May 1993 Newport DE

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How has your abortion affected you? I grieved the loss/murder of my child so much that I would have preferred death. I wanted my baby back so desperately that I purposefully got myself pregnant and had twins (March 19 1995). One boy & one girl. It was psychologically more devastating than being molested and sexually abused by my biological father. The abortion will be with me for the rest of my life. I have already begun ingraining in my children that sex is for marriage and marriage alone I always fear that I won't be able to have more children.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? even if it's rape – give the baby up for adoption. If it's incest pray about it.

Based on your own experience, what would you tell a court that believes abortion should be legal? Explain to me why I was legally able to murder my child but if I had killed my father who had molested me at seven yrs of age and then sexually abused me when I was 12 to about 16 – almost

17, I would have been sentenced. My baby did nothing wrong; my dad did.

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[000992]

AFFIDAVIT

The State of Texas

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Kaye Peterson

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Tell when and where your abortion occurred: Spring, 1975, doctor's office, San Antonio, TX

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How has your abortion affected you? I believe it made me neurotically fearful of responsibility. I was just sad for 22 years.

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Based on your own experiences, what would you tell a woman considering an abortion? Though you may be in terrible anguish, please do the right thing. You already have a baby – not a potential one, as I told myself. How I wish I had talked to someone and been willing to listen.

Based on your own experience, what would you tell a court that believes abortion should be legal? You may tell yourself you're only trying to help women, but the opposite is true. It's hard to think clearly in a crisis pregnancy. We

need the law to help us, not hinder us in making good decisions.

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[001034]

AFFIDAVIT

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The State of Minnesota

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Lauralee Peterson

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Tell approximately when and where your abortion occurred: December 1981

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How has your abortion affected you? My abortion has given me 22 years of sorrow and regret. When I realized the development of my child and the fact that abortion stopped my child's beating heart I was filled with anger and sorrow. At the age of 16 I was not mature encugh to make such a decision. My other children also know they have a missing sibling.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Abortion kills – solves nothing. I would tell her she is already a mother, her choice is to kill, to parent or to give the child for adoption. Abortion is permanent, can never be changed or replaced – the grief never stops.

Based on your own experience, what would you tell a court that believes abortion should be legal? A government's job is to protect innocent life and to ensure justice. Abortion is

a grave injustice, like slavery it relegates some people as less than human. It is completely immoral. It is murder.

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[001035]

AFFIDAVIT

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The State of NEVADA

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JACCI PIERCE

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Tell when and where your abortion occurred: APRIL 2000; LAS VEGAS NEVADA

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How has your abortion affected you? HAVING THAT ABORTION, KILLING MY BABY, HAS AFFECTED MY LIFE IN EVERY ASPECT. IT CREATED SEVERE EMOTIONAL DAMAGE THAT ALSO CAUSED RELATIONSHIP DAMAGE NOT TO MENTION ONLY PUTS ANOTHER PROBLEM ON TOP OF ANOTHER PROBLEM WHICH MAKES IT EVEN MORE DIFFICULT TO COPE.

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Based on your own experiences, what would you tell a woman considering an abortion? I WOULD TELL THAT WOMAN THAT IT WILL BE THE WORST EXPERIENCE OF THEIR LIFE. THAT THEY ARE TRYING TO PUT A BAND-AID OVER THE REAL SITUATION BUT INSTEAD THEY ARE CARVING A SCAR AND I WOULD TELL THEM ALL FACTS!

Based on your own experience, what would you tell a court that believes abortion should be legal? I WOULD TELL THEM THAT THEY

SHOULD FREE ALL THE PRISONERS LOCKED UP FOR MURDER! I WOULD TELL THEM THAT OUR COUNTRY IS GOING TO SLOWLY FADE AWAY . . . ANYONE WHO THINK COLD KILLING IS A 'WOMANS' SOMETIMES EVEN A *CHILDS* CHOICE IS OK SHOULD APPRECIATE *THEIR* BREATH MORE & THANK THE LORD THEY HAVE A CHOICE TO LIVE!

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[001044]

AFFIDAVIT

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The State of MS

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Pamela D. Pigott

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Tell approximately when and where your abortion occurred: WASHINGTON, DC FEB 1973 or 1972 AUG 1973 or 1972

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How has your abortion affected you? TO THIS DAY, I CONSIDER MYSELF A MURDERER, ONE WHO HAS TAKEN THE LIFE OF AN INNOCENT CHILD. THERE IS NOTHING I HAVE BEEN ABLE TO DO THAT WOULD *EVER* ABSOLVE ME OF THIS CRIME EXCEPT THE BLOOD OF CHRIST. DRUGS, ALCOHOL AND SEX WERE THINGS I USED TO KILL THE ANGUISH OF WHAT I DID NOT ONCE BUT *TWICE*. NONE OF THAT WORKED.

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Based on your own experiences, what would you tell a woman considering an abortion? DON'T DO IT! DO NOT DO IT! UNDER ANY CIRCUMSTANCES. DO NOT DO IT!

Based on your own experience, what would you tell a court that believes abortion should be legal? IT IS NOT IN THE BEST INTEREST OF THE WOMAN TO MURDER HER BABY AND IT IS NOT IN THE BEST INTEREST OF SOCIETY TO CONDONE THE THE ACT. TO SHED INNOCENT BLOOD FOR ANY REASON IS WRONG; TO SHED IT FOR THE SAKE OF CONVENIENCE IS AN ABOMINATION. "THE HAND THAT ROCKS THE CRADLE RULES THE WORLD." OUR CRADLES ARE FILLED WITH BLOOD AND WE ARE SURPRISED WHEN CHILDREN KILL CHILDREN.

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[001045]

AFFIDAVIT

The State of Texas

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Bethann Pritchard

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Tell when and where your abortion occurred: December 19th, 1980; abortion clinic in Pasadena, Texas, behind Sruthmore Hospital. Dr. Swade (Schrade?) was the doctor.

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How has your abortion affected you? How has it *not* affected me!?!? Every area was affected – more drugs, alcoholism, promisuousness, inability to have deep, sustained relationships. *Inability to conceive* since my abortion.

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Based on your own experiences, what would you tell a woman considering an abortion? I would tell her not to have one – it destroys your life and kills your baby. I would give *anything* to be able to go back and make a different choice – to choose life, for me and my baby.

Based on your own experience, what would you tell a court that believes abortion should be legal? No, No, No – abortion should NOT be legal. I wish it hadn't been legal when I had my abortion. There are other means to deal with an unwanted pregnancy – adoption, foster homes, carrying to term – there is only *one way – LIFE*!! Abortion *IS* murder, and murder is against the law!!!

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[001065]

AFFIDAVIT

The State of Texas

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PATRICIA PULLIAM

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Tell when and where your abortion occurred: 1974 Detroit, Michigan

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How has your abortion affected you? Early on it caused depression and marital problems. Later it led me to begin counseling at a crisis pregnancy center in Houston, TX.

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Based on your own experiences, what would you tell a woman considering an abortion? The solution of ending the life of your own child is the worse violence you can do to yourself. By removing, by force, a human life you demean yourself as a woman totally.

Based on your own experience, what would you tell a court that believes abortion should be legal? The Legal Killing of your own child is an act of desperation and confusion. If full knowlege of all the aftermath of abortion was made public it's social acceptability would become less and less. If abortuary facilities were held accountable to the same degree as other medical facilities this would all stop.

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[001067]

AFFIDAVIT

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The State of Texas

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Lynn F. Rasberry

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Tell approximately when and where your abortion occurred: 1980 Houston Texas

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How has your abortion affected you? I now realize that this was sin and have gone to the Lord to ask for forgiveness. Unfortunately 20 years has passed and I have not had another child. That one pregnancy was my only chance to bare children. This has caused me much agony

and personal pain. I have had to deal with anger and relationship problems and was divorced after the abortion. I have not remarried and feel this is also due to my abortion. I have had to deal with issues regarding my worth as a woman since I am not married and have no children If I would have known the risks and complications from abortion both physical, emotional, and spiritual, I would not have had an abortion.

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Based on your own experiences, what would you tell a woman considering an abortion? I would make sure that the woman was informed regarding all the possible risks to her health and emotional wellbeing and also to the affect oh her relationship with God and her future without this child in her life.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell the courts that abortion is a crime against humanity. A woman was not created to kill her own children. This is contrary to her nature and legalized abortion encourages the woman to take this option that will affect her for life. The child will never leave her emotionally, but will always exist.

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[001082]

AFFIDAVIT

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The State of Tennessee

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R.W.R.

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Tell when and where your abortion occurred: February, 1989, Marina del Rey, California

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How has your abortion affected you? I feel guilty. I love children but don't really feel that I deserve one. I have been diagnosed with endometreosis (?) and may not be able to have any now anyway. Don't really think I can ever get close enough to anyone to trust them with this shame so I am still single.

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Based on your own experiences, what would you tell a woman thinking of having an abortion? Get all the facts and get all the options. 9 months of discomfort are nothing compared to the lifetime of guilt and shame you will feel. Not to mention the horror when you realize what you did to your own child. Be very sure you can live with the outcome.

Based on your own experience, what would you tell a court that believes abortion should be legal? Legal murder is still murder. We have no right to decide who lives or dies nor should we. If the truth about abortion were made public I cannot imagine any decent human being approving of this

horror. We condemned Hitler. How can we not condemn ourselves for allowing this to continue.

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[001091]

AFFIDAVIT

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The State of TEXAS

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Dorothy Rogers

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Tell when and where your abortion occurred: FEBRUARY – 1975 10½ weeks MEDICAL RESEARCH ASSOCIATES CLINIC, SAN ANTONIO TEXAS DR. BRANDON CHENAULT

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How has your abortion affected you? YES . . . EMOTIONAL PAIN AND TORMENT FOR YEARS UNTIL GOD FORGAVE AND HEALED ME. IT HAS AFFECTED ME PHYSICALLY AS WELL. I CANNOT HAVE CHILDREN.

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Based on your own experiences, what would you tell a woman considering an abortion? DON'T DO IT! YOU WILL REGRET IT FOR THE REST OF YOUR LIFE. NO MATTER HOW BAD YOUR SITUATION IS, THERE ARE ALTERNATIVES. IT'S NOT WORTH THE HEALTH RISKS INVOLVED. YOU ARE KILLING A HUMAN BEING.

Based on your own experience, what would you tell a court that believes abortion should be legal? IT IS JUST AS IF I

KILLED MY CHILD. THE ONLY DIFFERENCE WAS THAT HE WAS INSIDE OF ME AND THAT MADE IT LEGAL. IF HE WERE OUTSIDE MY BODY, IT WOULD HAVE BEEN MURDER.

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[001120]

AFFIDAVIT

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The State of California

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Gayle Schroeder

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Tell approximately when and where your abortion occurred: Feb 25, 1994 – Upland, CA Planned Parenthood

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How has your abortion affected you? I have never recovered & never will. I know God has forgiven me, but I can't forgive myself. I feel dirty & unworthy. Not a day goes by that I see a child & wonder what ours would have been like. If plann d parenthood would have told me there was other help or alternatives but never said anything. I still remember the sound of the vacuum at the abortion. But through it all I want to turn something so terrible into something positive. I want to help others not to make the same mistake & overturn Roe vs Wade

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Based on your own experiences, what would you tell a woman considering an abortion? Don't listen to abortionists see a sonogram, get facts on when a babys heart first beats.

You can never go back. Abortion is not something you correct & make right again. It's final I have so much I could draw on over these past years to help someone.

Based on your own experience, what would you tell a court that believes abortion should be legal? every human being has rights that includes unborn babies – having an abortion does not free you – it makes you a prisoner to the horrific act you commited. There is no need for abortion – thousands would love to adopt & birth control is plentiful. Abortion is a money maker for abortionists who have no respect for human life.

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[001146]

AFFIDAVIT

The State of Texas

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Suella Shaner

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Tell when and where your abortion occurred: 1. 1968 private home Dallas, TX 2. 1978 clinic – Dallas Texas

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How has your abortion affected you? I live with the knowledge that my 2 aborted children might have been bone marrow matches for my 27 year old son who died of cancer 3½ yrs. ago.

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Based on your own experiences, what would you tell a woman considering an abortion? There will be long term

emotional, mental, and spiritual side-effects that will need to be dealt with.

Based on your own experience, what would you tell a court that believes abortion should be legal? I had no real choice in the matter. There are many outside pressures to abort and no education on the matter of consequences. It is not our choice many times . . . it is lambs to slaughter.

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[001161]

AFFIDAVIT

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The State of OHIO

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Amy Shatrick

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Tell approximately when and where your abortion occurred: Dec. 1990 in Akron Ohio

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How has your abortion affected you? Guilt, Guilt. Guilt. I always think of it on the anniversary. My baby would be 13 this August. I think of that every year. Unbelievable sadness. I drank heavily suffered nightmares, bad relationships, shame cervical cancer, irregular pap smears. I can't believe I killed my first baby! No one wants to discuss it. It's my secret. I never heard about what abortion actually did to the fetus or mother. It's a lie, that it is a good thing. It is a death sentence for baby & very possibly the mother physically mentally spiritually.

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Based on your own experiences, what would you tell a woman considering an abortion? I would tell her how the baby looks, what it does at 8 wks & show her pictures. Offer alternatives tell her that her & her baby are valued and loved. I would plead with her not to do it. I would share all I had experienced.

Based on your own experience, what would you tell a court that believes abortion should be legal? THAT ABORTION IS MURDER – Premeditated. It takes the babies life and ruins the mothers. It is infantacide & genocide. God will hold them accountable for there role in this.

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[001162]

AFFIDAVIT

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The State of SC

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Lawrie J. Sikkema

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Tell when and where your abortion occurred: 1979 – Navy Hospital in Okinawa Japan;

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How has your abortion affected you? Physically – tubal pregnancy, hard to concieve 3 miscarriages from scar tissue; Emotionally – severe depression, guilt, suicidal thoughts, drug & alcohol abuse, eating disorder, low self-esteem, violent anger, etc!!!

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Based on your own experiences, what would you tell a woman considering an abortion? To *PLEASE* know *EVERYTHING* about abortion before doing it (especially after-effects; other options – Adoption – pregnancy homes, Gov't. help – local help

Based on your own experience, what would you tell a court that believes abortion should be legal? Unborn, children (at *ANY* stage of life) should have the *RIGHT* to be born – these babies do not have a voice, therefore *WE* need to be their voices and speak-up for them.

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[001174]

AFFIDAVIT

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The State of TN

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Myra Simons

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Tell approximately when and where your abortion occurred: 1986 – Planned Parenthood, Memphis, TN

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How has your abortion affected you? The memory haunts my life – it is ever Present. I think about how old my child would be, what I would have named her – and all the great times we would have had. I miss my baby. It has been so long ago, but I still weep about it. I can't count the times I have walked through that Planned Parenthood Clinic in my mind.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Please. Please stop – just because some misguided judges, say it is legal does not mean it's good for you – it is the worse decision you will ever make

Based on your own experience, what would you tell a court that believes abortion should be legal? So many lives have been lost, so many women are suffering. It is apparent our society and our legal system cares nothing for the child, but if you truly care about the woman – then stop this madness – it is so destructive to women.

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[001175]

AFFIDAVIT

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The State of Indiana

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Katy Smith

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Tell approximately when and where your abortion occurred: February 1997, Indianapolis IN

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How has your abortion affected you? In countless ways, I suffered from depression, anxiety, nightmares, fear of never being able to be pregnant again, I distrusted people. I was very angry, I stayed in a co-dependent relationship that was emotionally debilitating. I eventually sought counseling and found relief but to this day I deeply regret

my abortion, I deeply miss my child, the way that I view my life is pre & post abortion and I am not able to remember events in my life as well since the abortion

* * *

Based on your own experiences, what would you tell a woman considering an abortion? This is not an answer to the problem. That this abortion will only cause further problems in her life, she will battle depression, grief, anger, loss. She could also downward spiral into a life of drinking, STD's, more unwanted pregnancy and abortions

Based on your own experience, what would you tell a court that believes abortion should be legal? This act is an offense to our women. It is morally wrong, a barbaric, tortorous act that murders children and causes women to suffer needlessly for years. Feminists of today should realize this isn't a choice, they should fight for the mental, emotional, and physical health of women and the children they are carrying. Life is precious and should be preserved. If abortion was illegal, I never would have had one. There is no good reason, ever, to have an abortion.

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[001186]

AFFIDAVIT

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The State of Wisconsin

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Tracy A. Stalsberg

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Tell approximately when and where your abortion occurred: May 16, 1987 in Chicago, IL

* * *

How has your abortion affected you? The greatest way it affects me is in the overwhelming regret I feel and must live with for the rest of my life. In addition, I have suffered other emotional difficulties that I definitely contribute to my abortion experience. One area has been trying to deal with intense anger issues that come from feeling that I was incredibly deceived by the abortion industry. My life was changed forever, in a most horrible way, that day 15 years ago when I killed my own child and I can never take it back.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? I would tell her that abortion is not the end of your problems, but rather the beginning! I would share my own experiences and ask her if she could live with the regret of killing her own child – A CHILD, NOT A BLOB OF TISSUE – for the rest of her life?

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell them that I know that there are TWO victims of abortion – one dies physically and the other dies emotionally. Abortion DOES NOT help women, rather it hurts women!

* * *

[001198]

AFFIDAVIT

* * *

The State of Kansas

* * *

Michelle Stewart

* * *

Tell when and where your abortion occurred: in the spring of 1981 in Wichita, KS

* * *

How has your abortion affected you? It has left me devastated. I will never feel whole again, until I get to heaven, where I will see my baby for the first time.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? I would beg her not to do it – not to kill her baby! I would tell her of the unimaginable guilt, sorrow and horror she will live with every day of her life if she does. It will be the one thing in her life that she will always regret doing.

Based on your own experience, what would you tell a court that believes abortion should be legal? They are wrong. ABORTION IS MURDER and should NEVER be legal, under any circumstances. Even if I were raped, and pregnant I would not abort – No child is a mistake in God's plan. Abortion is a lie, a lie to the mother, a lie to

society, it is time for the truth. The truth is that ABORTIONS ARE WRONG!!

* * *

[001214]

AFFIDAVIT

* * *

The State of OREGON

* * *

Sherri Suminski

* * *

Tell when and where your abortion occurred: Jan. 1985 Lovejoy Clinic, Portland OR

* * *

How has your abortion affected you? The grief and guilt have been tremendous. Physically I had no complications. Mentally and spiritually I was crushed, moved into denial. When I bore my first child it became very clear what I had done – killed a living, viable baby.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? You think this is a good solution to your problem, but the consequences will be with you all your life, creating worse problems. Do not kill the life inside you, your baby, because you see it as a problem. See that LIFE inside you in the light of truth.

Based on your own experience, what would you tell a court that believes abortion should be legal? No one, mother or

father, has the right to end an innocent life. Why is it legal for a mother to kill her child because it's inconvenient, unwanted a problem? Why is her body more important, her choice more important than a living child? Why are you allowing a woman to choose to hurt herself, her child?

* * *

[001229]

AFFIDAVIT

* * *

The State of Iowa

* * *

T.T.

* * *

Tell when and where your abortion occurred: September 9, 1981

* * *

How has your abortion affected you? I developed an infection immediately and I believe it then led to painful menstrual cramps. I was also depressed for several years

* * *

Based on your own experiences, what would you tell a woman considering an abortion? I would tell her the facts of the procedure and what it does physically then I would explain the emotional effects. And then I would say "It's just plain murder" Don't do it.

Based on your own experience, what would you tell a court that believes abortion should be legal? Life should be held as precious and sacred and should be protected by the

courts. Murder is never right. The law of this nation should protect the "life" of the unborn! I implore you to make and uphold laws that make abortion illegal.

* * *

[001250]

AFFIDAVIT

* * *

The State of Texas

* * *

Marelean Thomas

* * *

Tell approximately when and where your abortion occurred: 1972 Minneapolis, Mn.

* * *

How has your abortion affected you? I was taught or told the fetus was not life. I learned better and sence I have suffered from guilt and severe depression. It has been very difficult to forgive myself. I still take antidepressants. I am haunted by the fact I have murdered the innocent. I am unable to relate to men they way I once did.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? To abort a pregnancy is murder. You will not have peace or stability in your life. It will be difficult to have a loving relation with your husband and family.

Based on your own experience, what would you tell a court that believes abortion should be legal? Abortions should not be legal because it is murder. Also take into consideration, the effect it has on the person and how the person affect society. Please overturn ROE VS WADE.

* * *

[001254]

AFFIDAVIT

* * *

The State of Arizona

* * *

Peggy Sue Trakes

* * *

Tell approximately when and where your abortion occurred: Good Samaritan Hosp; Oct. 1970

* * *

How has your abortion affected you? I had very low self-esteem after my abortion and began drinking & using drugs. I eventually married 3 times and had depression on an annual basis around the time of my abortion. My eventual ability to bond with and mother my daughter was drastically reduced b/c I had never healed from the abortion of my first child.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? No amount of rationalizing now will be worth the irreversible consequences of knowing forever that you took your baby's life. You will regret it for

the rest of your life. No reason is good enough for the pain mentally.

Based on your own experience, what would you tell a court that believes abortion should be legal? You have the power over life & death. Sometimes wrong is wrong no matter the cost. Please look @ the results of the legalization of abortion & what it has become – including late-term abortions. Why do we prosecute a criminal who kills a fetus in the process of a crime – but we don't consider it illegal if the mother consents??

* * *

[001269]

AFFIDAVIT

* * *

The State of Ohio

* * *

Beth Ann Valantine

* * *

Tell when and where your abortion occurred: Dr. Hx. Kramer – 107 Javit Court. Youngstown, Ohio 44515 12/19/83 – Youngstown Assoc. in Obstetrics & Gynecology

* * *

How has your abortion affected you? I was suicidal; full of guilt and shame. Suffered from fear & depression. Caused marital & relational problems, crying spells, anxiety, panic attacks, sleep disturbances. Suffered most on anniversary of abortion. Physically had difficulty carrying my children

(2) to term. Had (1) miscarriage. Couldn't believe God could love me.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? It is never the answer! It is not the "easy way out". It would've destroyed me if I didn't get help.

Based on your own experience, what would you tell a court that believes abortion should be legal? My choice almost destroyed my life. Who knows where my life would've gone if I had not made such a tragic decision. I was eight weeks pregnant (approx.) no one told me my baby's heart was beating and there was brain activity. All he needed was time to grow.

* * *

[001287]

AFFIDAVIT

* * *

The State of California

* * *

L.V.

* * *

Tell approximately when and where your abortion occurred: Los Angeles July 22, 1981

* * *

How has your abortion affected you? about 7 years later it hit me like a ton of bricks that I had killed my child & I

considered taking my own life because of it. If it hadn't been for a friend who led me to forgiveness of God & forgiveness from my child & to forgive myself I would not be at peace today. I now encourage expecting moms & dads to not make the same mistake. & to love & receive the gift of life irregardless of the circumstances.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? I would tell her that abortion is never the answer to a problem. To ask for help if she needs it, and if she really doesn't want the baby to give the baby to a family via adoption.

Based on your own experience, what would you tell a court that believes abortion should be legal? That an unborn human being should have the same protection as people already born. There was a time when black people were not considered human & the United States gave protection under the constitution to blacks and ALL living beings, and an unborn child is living. Also the Jews were treated as non-humans in the holocaust & the unborn children are being treated the same way.

* * *

[001294]

AFFIDAVIT

* * *

The State of WI

* * *

Barbara Vlasak

* * *

Tell when and where your abortion occurred: Madison, WI October 1975

* * *

How has your abortion affected you? When I finaly woke up to the reality of what I had done I was very upset & angry with myself. I truly feel like a murderer.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? I would tell her the whole truth. When my daughter got P.J. while still in high school I was able to share with her & she decided to have her baby & give him up for adoption. It was an open adoption & he has a great life!

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell them how very wrong they are & thousands of women who have gone through abortions would tell them the same thing.

* * *

[001307]

AFFIDAVIT

* * *

The State of Ohio

* * *

Beth Ann Ward

* * *

Tell when and where your abortion occurred: January 27, 1976 – Dayton, Ohio – Abortion Clinic

* * *

How has your abortion affected you? Initially – I became angry and depressed. My Boyfriend Broke up with me. I felt totally alone. Slowly other kids at school found out about my Abortion. I was Ashamed and Embarrassed. I secured counseling for thoughts of suicide and Depression. The Doctor used Hypnosis on me??!! And stated I needed to get in touch with my Female personhood! It took years to overcome the trauma of my abortion.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? I would plead with her not to have an Abortion. The Emotional, Physical and Spiritual consequences are Devastating!!

Based on your own experience, what would you tell a court that believes abortion should be legal? An Abortion Choice Does Not Empower A Woman. Rather An Abortion decision leaves a woman in her own personal prison. Her

prison is filled with pain and sadness and the cries from her unborn child!

* * *

[001322]

AFFIDAVIT

* * *

The State of Texas

* * *

Karen L. Waring

* * *

Tell approximately when and where your abortion occurred: 1981 in San Antonio, Texas

* * *

How has your abortion affected you? Severe depression right after and it has been 20 yrs. since and I am still working through my grief, shame and pain. I don't ever NOT think of the life that was lost. It is undoubtly the worst memory of my entire life.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Don't do it. Get the facts, consider other options, know that it will profoundly effect you the rest of your life.

Based on your own experience, what would you tell a court that believes abortion should be legal? Abortion is murder. If you aren't willing to stab your own family members to

death how can you allow someone to perpetuate this on someone else. Every life matters, protect them.

* * *

[001324]

AFFIDAVIT

* * *

The State of Florida

* * *

JULIE R. WESLEY

* * *

Tell when and where your abortion occurred: On or about March 1980, College Park, Maryland

* * *

How has your abortion affected you? Right after my abortion a deep feeling of hate and anger towards all who were involved including myself came over me. Then a feeling of separation from my body. One month later I had a nervous breakdown and I had a drug and alcohol abuse which I almost died from and to this day a deep feeling of loss and regret.

* * *

Based on your own experiences, what would you tell a woman thinking of having an abortion? I would tell any woman considering abortion to please not do it. I would tell her my emotional torment. I would also tell her I know women who have never been able to have children because of the damage done because of abortion

Based on your own experience, what would you tell a court that believes abortion should be legal? I would say abortionists know they are taking the life of a baby. In the middle of my abortion the doctor yelled at the nurses these exact words: "How far along is she? This baby is fighting me." I had an abortion because of peer pressure but the consequences for me, the pain and loss I feel, will never go away.

* * *

[001350]

AFFIDAVIT

* * *

The State of Wisconsin

* * *

Terri White

* * *

Tell when and where your abortion occurred: August 1980 in Rockford IL

* * *

How has your abortion affected you? Physically, emotionally, spiritually – I died inside. I am unable to have more children, I have severly abused drugs & alcohol & been sexually active with many men, I have had to stuff my grief & emotions because I could not handle the fact that I killed my daughter.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? That a living, breathing

little life, her son or daughter, grows within her – she is already a mother. That sorrow, regret & grief will haunt her for years. That CPC's exist to help her to look at all the options & educate her on abortion procedures & consequences. That adoption is a beautiful choice too. I would give her the knowledge she needs to make an informed decision – not a reaction to a situation.

Based on your own experience, what would you tell a court that believes abortion should be legal? That even science agrees that a human life is present at conception & therefore we have no more "right" to kill that human being than to a kill a human being outside the womb. That our constitution affords each person the right to life, liberty & happiness. That abortion kills 2 people (at least) always – a baby dies & a mother's spirit dies too. A country that kills its own children cannot survive. There is not enough space here to say all that I would like to say!

* * *

[001355]

AFFIDAVIT

* * *

The State of Kentucky

* * *

Catherine C. Wilson

* * *

Tell approximately when and where your abortion occurred: Age 23 April '81 in Binghamton, NY

* * *

How has your abortion affected you? I have suffered with chronic depression for most of the years following my abortion. I have been suicidal at times. I have hated myself & have had great difficulty in my marriage due to the repressed grief & remorse over taking the life of my baby. I've struggled with horrible nightmares & have had a hard time accepting God's forgiveness. I experienced infertily & have lost a baby to miscarriage. I have been a prisoner in emotional jail.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? I would tell her that she will spend the rest of her life . . . grieving over the baby she would never hold. I would urge her to not make the choice to put herself through the torture that follows this dreadful choice.

Based on your own experience, what would you tell a court that believes abortion should be legal? There is nothing that kills a woman's soul more than the willful choice to destroy one's own baby. Abortion is murder of not just one life, but two. Women who have had abortions suffer in silent emotional & spiritual torture for the rest of their lives.

* * *

[001375]

AFFIDAVIT

* * *

The State of TN

* * *

Konnie S. Woods

* * *

Tell when and where your abortion occurred: Columbus Ohio at Northwest Womens Center in 1982 & 1984

* * *

How has your abortion affected you? I have no children today. I have been happily married for 10 years but I can't have a baby. I have dealt with much regret & sorrow.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? No way. It is a choice you just cannot live with. I show them how much the baby is developing and I let them know the side effects.

Based on your own experience, what would you tell a court that believes abortion should be legal? That there is no way something so horribly impacting on ones life should be legal. There is no way that anyone can understand how bad it is until they have experienced the trama.

* * *

[001389]

AFFIDAVIT

* * *

The State of Michigan

* * *

Mary Ellen York

* * *

Tell approximately when and where your abortion occurred: 1972 New York

* * *

How has your abortion affected you? I was affected dramaticly by my abortion for years I couldn't even look at a baby & when I heard the word abortion I would just cringe. I suffered depression & I didn't like myself very much. Feelings of guilt, I found it very hard to forgive myself. It took my life from me.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? That you will regret it. You might think it's the only answer now. But, it will haunt you for the rest of your life.

Based on your own experience, what would you tell a court that believes abortion should be legal? I don't see how you as a court believe in abortion. A court is about justice & fairness, it is not just or fair to the innocent baby (human being) being aborted. Abortion is murder no matter which way you look at it!

* * *

[001401]

AFFIDAVIT

* * *

The State of Tennessee

* * *

Suzanne Young

* * *

Tell approximately when and where your abortion occurred: January, 1979 – Little Rock, AR

* * *

How has your abortion affected you? Until Jesus came for me on January 17, 1991, I struggled with an inability to maintain close relationships; anger and bitterness towards my mother, my friends, and the world in general. An absolute aborhance for pro-life advocates. I drank a lot of alcohol, smoked a lot of marijuana and had a lot of casual relationships with men. At one point I considered suicide.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? That the consequences are enormous and the emotional pain is unspeakable.

Based on your own experience, what would you tell a court that believes abortion should be legal? Abortion hurts women! The courts are always willing to hand down decisions to protect the general populace except in regards to abortion. This is a procedure that hurts women, kills

babies, destroys relationships. This is an issue of "the greater good." Abortion is not for the "greater good."

* * *

[001403]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Norma McCorvey, formerly known as JANE ROE,	§	
Plaintiff,	§	
V.	§	CIVIL ACTION NOS. 3-3690-B AND 3-3691-C
HENRY WADE, Through His Official Successor in Office, William "Bill" Hill, Dallas County District Attorney,	§	3:03 CV 1340-N
Defendant.	§	

RULE 60 MOTION FOR RELIEF FROM JUDGMENT

(Filed Jun. 17, 2003)

TO THE HONORABLE COURT:

NOW COMES, NORMA MCCORVEY, formerly known in this Court as Jane Roe, the Plaintiff herein (hereinafter referred to as "Plaintiff"), and would respectfully show this Honorable Court the following:

1. Pursuant to Federal Rules of Civil Procedure, Rule 60(b)(5) and (6), Plaintiff files this Rule 60 Motion For Relief From Judgment. Plaintiff hereby seeks the relief of vacating this Court's previous judgment in favor of Plaintiff in this cause on the grounds it is no longer just or equitable to give it prospective application.

FACTUAL HISTORY AND PROCEDURAL BACKGROUND

2. On June 17, 1970, a three-judge court issued a ruling in this cause declaring the Texas abortion laws that prohibited abortions except to save the life of the mother unconstitutional.[1] On January 22, 1973, the United States Supreme Court affirmed this Court's judgment.[2] On the same day, the United States Supreme Court also ruled in a companion case to *Roe, Doe v. Bolton.*[3]

3. The existing and prospective application of this Court's judgment and the subsequent affirmation of the Supreme Court prevent the state of Texas from enforcing its laws prohibiting abortion except to save the life of the mother.

REQUEST FOR THREE-JUDGE COURT

4. Plaintiff requests that this Motion be heard and determined by a three-judge court in accordance with 28 U.S.C.S. §§ 2281 and 2284. This cause of action was originally heard by a three-judge court in 1970 in accordance with 28 U.S.C.S. § 2281 which provided for a three-judge court for cases involving injunctions against enforcement of State statutes. Although 28 U.S.C.S. § 2281 was repealed by amendments to 28 U.S.C.S. § 2284, the repeal "shall not apply to any action commenced on or before the date of enactment [enacted Aug. 12, 1976]". 28 U.S.C.S. § 2284. This cause commenced before the date of

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[1] *Roe v. Wade,* 314 F.Supp. 1217 (1970) (hereinafter "*District Court Roe*").

[2] *Roe v. Wade,* 410 U.S. 113 (1973) (hereinafter "Roe").

[3] 410 U.S. 179 (1973) (hereinafter "*Doe*").

enactment and involves an original cause of action seeking an injunction against the enforcement of a State statute. Furthermore, 28 U.S.C.S. § 2284 provides that when a three-judge court is required under federal statute "[a] single judge shall not . . . hear and determine any application for a preliminary or permanent injunction or motion to vacate such an injunction, or enter judgment on the merits." This Motion pursuant to Fed. R. Civ. P. 60(b) is seeking a final determination on the merits and accordingly the three-judge court should be re-convened to hear this Motion.

PARTIES

5. Plaintiff, Norma McCorvey, formerly known in this Court as Jane Roe, is the original Plaintiff herein, and an original party hereto.

6. Defendant, Henry Wade, is represented in this cause by and through his official successor in office, William "Bill" Hill, Dallas County District Attorney. The State of Texas entered as a party after receiving notice of intent to seek a declaration of the unconstitutionality of a state statute.

7. James Hubert Hallford was granted leave to intervene by the District Court. John and Mary Doe filed a companion complaint, cause no. 3-3691-C, and the two actions were consolidated and heard together.[4] Dr. Hallford and the Does were held not to have standing by the United States Supreme Court.[5]

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[4] 410 U.S. *at* 121-22.

[5] 410 U.S. *at* 125-28.

REQUEST FOR EVIDENTIARY HEARING AND ORAL ARGUMENT

8. There has been a significant change in both the factual and legal landscape surrounding this cause of action since the three-judge court's original ruling in this case. Plaintiff Norma McCorvey is alleging both (1) significant changes in factual conditions and (2) significant changes in law which make if no longer just to continue the prospective application of *Roe*. With respect to the factual allegations, there must be a factual determination made, an opportunity for the presentation of evidence, and the development of a full record. A thorough hearing and development of an adequate fact-finding record is necessary in order for the Court and, in the event of an appeal, the appellate court, to make fully informed, intelligent and well-reasoned decisions. Appellate Courts do not conduct their own fact-finding hearings, they rely upon the lower courts to develop a proper record.

9. When considering a motion pursuant to Fed. R. Civ. P. 60(b), the "threshold issue" is whether the factual landscape has changed since the court's previous decision.[6] Factual matters should be decided by the trial court. The decisions of the Supreme Court in *Roe v. Wade* and *Doe v. Bolton* are obviously of tremendous national concern and importance. They remain as controversial today as they were when decided thirty years ago. The importance of these cases and the issues raised in Plaintiff's Motion for Relief From Judgment warrant a full and complete factual exposition of changed factual circumstances. Accordingly,

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[6] *Agostini v. Felton*, 521 U.S. 203 (1997) (hereinafter "*Agostini*").

pursuant to the Federal Rules of Civil Procedure, Plaintiff hereby requests an evidentiary hearing and oral argument before the three-judge court in order to present the evidence and legal authorities now available to the Court.

CASE LAW AND AUTHORITIES

10. Federal Rule of Civil Procedure 60(b)(5) and (6) provide:

> "(b) On motion and upon such terms as are *just*, the court may relieve a party or a party's legal representative from a final judgment, order or proceeding for the following reasons: . . . (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is *no longer equitable* that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment." [Emphasis added.]

11. The primary United States Supreme Court opinion which determines the proper legal standard for a court to follow when considering a motion pursuant to Fed. R. Civ. P. 60(b) is *Agostini v. Felton.*[7] In *Agostini,* twelve years after the Supreme Court held in *Aguilar v. Felton*[8] that the Establishment Clause barred the New York City Board of Education from sending public school teachers into parochial schools, the Board and parochial school children's parents filed a motion under Fed. R. Civ. P. 60(b)(5) seeking relief from the permanent injunction

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[7] *Id.*

[8] 473 U.S. 402 (1985).

entered by the Court in 1985. The Court found that a motion pursuant to Fed. R. Civ. P. 60(b) was procedurally sound and the appropriate vehicle for the parties to seek relief from a prior ruling of the Court.[9] The Court also found that the doctrines of *stare decisis* and the law of the case " . . . do(es) not preclude us from recognizing the change in our law and overruling *Aguilar* and those portions of *Ball* inconsistent with our more recent decisions."[10] "The doctrine does not apply if the court is 'convinced that [its prior decision] is clearly erroneous and would work a manifest injustice.'"[11]

12. In *Agostini,* the Court not only found that it had jurisdiction and authority to overrule their prior ruling in the same cause of action when considering a Fed. R. Civ. P. 60(b) motion, they also found that they had the authority to overrule a companion case to the current cause of action at bar.[12] Similarly, Plaintiff hereby requests that the Court not only overrule the prior decision in *Roe,* but also overrule the decision in the companion case hereto, *Doe.* Further, the evidence as presented herein and as Plaintiff will present at the evidentiary hearing and oral argument as requested herein will show that the prior decision of the Court is clearly erroneous and would work a manifest injustice if applied prospectively. Accordingly, under both Fed. R. Civ. P. 60(b) and *Agostini,* Plaintiff hereby requests that the prior ruling of the Court in this cause be vacated.

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[9] 521 U.S. at 214.

[10] *Agostini,* 521 U.S. 203; *School District of Grand Rapids v. Ball,* 473 U.S. 373 (1985) (the companion case to *Agostini).*

[11] 521 U.S. at 236.

[12] *See Agostini,* 521 U.S. 203.

13. When considering a Fed. R. Civ. P. 60(b) motion, the Court determined in *Agostini* that the threshold issue to be decided is "whether the factual or legal landscape has changed since . . . [the prior ruling of the Court]."[13] In *Rufo v. Inmates of Suffolk County Jail,* 502 U.S. 367, 384 (1992), the Supreme Court held that it is appropriate to grant a Fed. R. Civ. P. 60(b) motion when the parties seeking relief can show, "a significant change either in factual conditions or in law. 'A Court may recognize subsequent changes in either statutory or decisional law.'" "The Court cannot be required to disregard significant changes in law or facts if it is satisfied that what it has been doing has been turned through changed circumstances into an instrument of wrong."[14] Either a change in law or factual circumstances is sufficient by itself.[15] Both need not be proven. There have been significant changes in both factual circumstances and law since the prior ruling of the Court in *Roe.* New factual and legal evidence since the Court's decision in *Roe* and its companion case, *Doe,* as presented herein, in the Brief in Support of this Motion (incorporated herein by reference), and as will be presented to the Court at the evidentiary hearing requested by Plaintiff, now establishes that *Roe* and *Doe* have become an "instrument of wrong".[16] Accordingly, under Fed. R. Civ. P. 60(b) and current United States Supreme Court case law as cited herein, it is no longer just or equitable to give the *Roe* and *Doe* decisions prospective application.

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[13] 521 U.S. at 216.

[14] *Railway Employees v. Wright,* 364 U.S. 642, 647 (1961).

[15] 521 U.S. at 214.

[16] *See Railway Employees v. Wright,* 364 U.S. 642 (1961).

CHANGES IN LAW

14. There have been significant changes in both decisional law and statutory law since the Court's original ruling in this case. The three-judge court in the original cause of action in *District Court Roe* herein declared the Texas abortion statutes void as vague and overbroad, infringing upon Plaintiffs' Ninth and Fourteenth Amendment rights. The District Court found that if the right to procure an abortion is based upon the right to privacy under the Ninth and Fourteenth Amendments to the United States Constitution, then abortion is a fundamental liberty interest that the state could only infringe upon if there was an existing compelling state interest. *Id.* In *Roe,* the Supreme Court found that the state has a legitimate interest in protecting both the pregnant woman's health and the potentiality of human life, each of which interests grows and reaches a "compelling" point at various stages of the woman's approach to term.[17]

15. Since the original ruling of this Court and the United States Supreme Court in *Roe,* the Supreme Court has issued opinions in a number of subsequent cases that have significantly undermined the legitimacy of its ruling in *Roe. Webster v. Reproductive Services*[18], began the subsequent erosion of *Roe,* while not overruling it directly. The *Webster* ruling first allowed a state to favor childbirth over abortion and provided for viability testing, stating, "[t]here is no doubt our holding today will allow some

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[17] 410 U.S. at 162-63.

[18] *Webster v. Reproductive Services,* 492 U.S. 490 (1989) (hereinafter referred to as *"Webster"*).

governmental regulation of abortion that would have been prohibited . . . " under prior decisions.[19]

16. The *Casey*[20] decision further undermined *Roe*. The *Casey* opinion elevated society's profound interest in "potential" life[21]. Furthermore, the plurality opinion in *Casey* rejected *Roe's* classification of abortion as a fundamental right requiring strict scrutiny, stating, "[w]e acknowledge that our decisions after *Roe* cast doubt upon the meaning and reach of its holding."[22]

17. The over-expansive definition of "fundamental liberty interest" set forth in *Roe*, and even *Casey*, has been rejected by subsequent decisions of the Supreme Court. Specifically, in *Washington v. Glucksberg*[23] the Court's decision changed the underlying test used to determine which rights asserted by litigants should be ranked as "fundamental liberty interests" that are Constitutionally protected. In *Glucksberg*, a physician filed suit in federal court, claiming Washington's law banning assisted suicide violated his and his patient's Fourteenth Amendment liberty interest in determining the time and manner of one's death.[24] The *Glucksberg* Court established a new, two-prong test to enumerate which rights are so "implicit in the concept of ordered liberty"[25] as to be considered

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[19] 492 U.S. at 520-21.

[20] *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (hereinafter referred to as "*Casey*").

[21] *Id.*

[22] *Casey at 845.*

[23] *Washington v. Glucksberg*, 521 U.S. 702 (1997) (hereinafter referred to as "*Glucksberg*").

[24] *Id*

[25] *See Palko v. Connecticut*, 302 U.S. 319, 325 (1937).

"fundamental" and therefore Constitutionally protected. To be considered a fundamental liberty interest, the Supreme Court held that the right in question must:

(1) find a cognizable basis in the Constitution's language or design[26]; and

(2) be "so rooted in the traditions and conscience of our people as to be ranked as fundamental."[27]

18. The *Glucksberg* Court found that there is no fundamental liberty interest to determine the time and manner of one's death because: (1) "[the] right to assisted suicide finds no cognizable basis in the Constitution's language or design"[28]; and the "right to die" is not "so rooted in the traditions and conscience of our people as to be ranked as fundamental."[29] Applying the *Glucksberg* test directly to the case at bar, the right to procure an abortion (1) finds no cognizable basis in the Constitution's language or design, and (2) is not "so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Id.* To the contrary, the *Roe* Court itself indicated that "[t]he Texas statutes under attack here are typical of those that have been in effect in many States for approximately a century."[30] If anything, the regulation of abortion, rather than the right to procure an abortion, is "rooted in the traditions and conscience of our people"[31] as evidenced by a

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[26] 521 U.S. at 723, n. 18 (*quoting Vacco*, 80 F.3d 716 (1997)).

[27] 521 U.S. at 721 (*quoting Snyder*, 291 U.S. 97, 105 (1934)).

[28] 521 U.S. at 723, n. 18 (*quoting Vacco*, 80 F.3d 716 (1997)).

[29] 521 U.S. at 721 (*quoting Snyder*, 291 U.S. 97, 105 (1934)).

[30] 410 U.S. at 116.

[31] 521 U.S. at 721 (*quoting Snyder*, 291 U.S. 97, 105 (1934)).

century of statutes prohibiting the same. In light of such dramatic changes in decisional law, if this original cause of action were decided today, under the *Glucksberg* standard, the Texas abortion statutes should be upheld as Constitutionally sound. Based upon these subsequent changes in decisional law, there is no fundamental liberty interest to procure an abortion and it would be error for the Court to refuse to grant this Motion pursuant to Fed. R. Civ. P. 60(b) in light of such changes.[32] "It would be anomalous if the results reached under a constitutional standard remained binding after the standard or test was repudiated."[33]

19. Extremely significant changes in the law of federalism have occurred in Supreme Court decisions in recent years which would justify returning the decision whether to allow or prohibit abortion to the states.[34] Before *Roe* federalized the issue, women and family health and safety issues, and specifically abortion, were traditional state and local concerns.[35] With the re-emergence of federalism in recent landmark decisions, the Supreme Court has moved this critical area of constitutional jurisprudence to the forefront of federal judicial review. Beginning with *United States v. Lopez*, this movement represents a renewed emphasis on the judicial enforcement of the constitutional federalism boundary lines.[36]

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[32] *See Agostini.*

[33] *Planned Parenthood v. Casey*, 947 F.2d 682 (1991).

[34] *See, e.g.*, U.S. *v. Lopez*, 514 U.S. 549 (1995) *U.S. v. Morrison*, 529 U.S. 598 (2000), *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 116 S. Ct. 1114 (1995). (Need more cases here.)

[35] 410 U.S. at 139, 140 n. 34-37; 492 U.S. at 520 ("areas of medical practice traditionally subject to state regulation").

[36] 514 U.S. 549 (1995); *U.S. v. Morrison*, 529 U.S. 598 (2000), *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1995).

While the Court has largely focused on Congress in *Lopez* and its progeny, the *doctrine of federalism* applies to the dangers of overreaching national power among all branches of government, including the Supreme Court itself. In fact, "the danger to federalism may be greater from the federal courts than from Congress simply because judicial intervention is anti-democratic" such that "the states have relatively little recourse."[37] The common thread among the line of federalism cases involves the court's restriction of expansion of national power into traditional state law matters such as education, crime, family law and health issues, which abortion clearly involves.

20. Yet *Roe* is now completely contrary to this new line of cases. The Court's application of *Lopez* federalism to *Roe* could not only properly return this traditional state law matter to the states, but it could also restore the democratic processes needed on this issue of great controversy.[38] Therefore, in reversing *Roe,* the Court would be correcting excessive judicial intervention in these cultural clashes which can stoke great public resentment, politicize the courts themselves, and impede the abiding progress that comes from democratic governance.[39] The *Roe* decision has politicized every presidential election and Supreme Court nomination

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[37] J. Harvie Wilkinson III, *The 2000 Justice Lester W. Roth Lecture: Federalism for the Future,* 74 S. CAL. L. REV. 523, 536 (2001).

[38] *See* Plaintiff's Brief in Support of Rule 60 Motion for Relief From Judgment.

[39] *See* Justice Scalia bemoaning "carts full of mail" and "demonstrators" outside the Supreme Court, *Webster,* 492 U.S. at 535, (concurring in part and concurring in judgment).

since its decision and will do so until it is overruled and this issue is returned to the states and the people for democratic regulation.

21. In addition to the considerable changes in decisional law outlined above, there have also been significant changes in statutory law since the Court's original ruling in *Roe*. The overwhelming majority of states now permit some form of recovery for the loss of a child in the womb. For example, approximately ten states and the District of Columbia recognize a common law cause of action for mental anguish suffered as a result of the loss of a child in the womb.[40]

Illinois, North Carolina, Pennsylvania, Vermont and the District of Columbia recognize a common law cause of action for mental anguish suffered as a result of the death of an unborn child and a wrongful death cause of action for the death of a viable fetus. However, several states that recognize a common law cause of action for mental anguish suffered as a result of the death of an unborn child

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[40] *Krishnan v. Sepulveda;* 916 S.W. 2d 478 at 480-81, n.2 (1995), citing *Modaber v. Kelley,* 232 Va. 60, 348 S.E.2d 233, 237 (Va. 1986); *Giardina v. Bennett,* 111 N.J. 412, 545 A.2d 139, 140-42 (N.J. 1988); *Johnson v. Ruark Obstetrics and Gynecology Associates, P.A.,* 327 N.C. 283, 395 S.E.2d 85, 98-99 (N.C. 1990); *Hilsman v. Winn Dixie Stores, Inc.,* 639 So. 2d 115, 117 (Fla. App. 1994); *McGeehan v. Parke-Davis,* 573 So. 2d 376, 376-78 (Fla. App. 1991); *Prado v. Catholic Medical Center of Brooklyn and Queens, Inc.,* 145 A.D.2d 614, 536 N.Y.S.2d 474, 475 (N.Y. App. Div. 1988); *District of Columbia v. McNeill,* 613 A.2d 940, 942-44 (D.C. 1992); *Seef v. Sutkus,* 205 Ill. App. 3d 312, 562 N.E.2d 606, 608-09, 150 Ill. Dec. 76 (Ill. App. 1990); *Milton v. Cary Medical Center,* 538 A.2d 252, 256 (Me. 1988); *Amadio v. Levin,* 509 Pa. 199, 501 A.2d 1085, 1088-89 (Pa. 1985); *Vaillancourt v. Medical Center Hosp. of Vermont,* 139 Vt. 138, 425 A.2d 92, 95 (Vt. 1980); *Johnson v. Superior Court of Los Angeles Cty.,* 123 Cal. App. 3d 1002, 177 Cal. Rptr. 63, 65 (Cal. App. 1981).

do not recognize a wrongful death cause of action for the death of a viable fetus.[41] It is important to note that most

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[41] *See Eich v. Town of Gulf Shores*, 293 Ala. 95, 300 So. 2d 354, 358 (Ala. 1974); *Summerfield v. Superior Court of Maricopa Cty.*, 144 Ariz. 467, 698 P.2d 712, 724 (Ariz. 1985); *Hatala v. Markiewicz*, 26 Conn. Supp. 358, 224 A.2d 406, 407-08 (Conn. Super. Ct. 1966); *Worgan v. Greggo & Ferrara, Inc.*, 50 Del. 258, 128 A.2d 557, 558 (Del. Super. Ct. 1956); *Greater Southeast Community Hosp. v. Williams*, 482 A.2d 394, 397-98 (D.C. 1984); *Porter v. Lassiter*, 91 Ga. App. 712, 87 S.E.2d 100, 103 (Ga. App. 1955); *Wade v. U.S.*, 745 F. Supp. 1573, 1579 (D. Hawaii 1990); *Volk v. Baldazo*, 103 Idaho 570, 651 P.2d 11, 15 (Idaho 1982); *Chrisafogeorgis v. Brandenberg*, 55 Ill. 2d 368, 304 N.E.2d 88, 91-92 (Ill. 1973); *Britt v. Sears*, 150 Ind. App. 487, 277 N.E.2d 20, 26-27 (Ind. App. 1971); *Dunn v. Rose Way, Inc.*, 333 N.W.2d 830, 833-34 (Iowa 1983); *Hale v. Manion*, 189 Kan. 143, 368 P.2d 1, 3 (*Kan.* 1962); *Mitchell v. Couch*, 285 S.W.2d 901, 906 (Ky. 1955); *Danos v. St. Pierre*, 402 So. 2d 633, 639 (La. 1981); *State ex rel. Odham v. Sherman*, 234 Md. 179, 198 A.2d 71, 73 (Md. 1964); *Mone v. Greyhound Lines, Inc.*, 368 Mass. 354, 331 N.E.2d 916, 920 (Mass. 1975); *O'Neill v. Morse*, 385 Mich. 130, 188 N.W.2d 785, 786 (Mich. 1971); *Verkennes v. Corniea*, 229 Minn. 365, 38 N.W.2d 838, 841 (Minn. 1949); *Rainey v. Horn*, 221 Miss. 269, 72 So. 2d 434, 439-40 (Miss. 1954); *O'Grady v. Brown*, 654 S.W.2d 904, 911 (Mo. 1983); *White v. Yup*, 85 Nev. 527, 458 P.2d 617, 623-24 (Nev. 1969); *Poliquin v. MacDonald*, 101 N.H. 104, 135 A.2d 249, 251 (N.H. 1957); *DiDonato v. Wortman*, 320 N.C. 423, 358 S.E.2d 489, 495 (N.C. 1987); *Salazar v. St. Vincent Hosp.*, 95 N.M. 150, 619 P.2d 826, 830 (N.M. App. 1980); *Hopkins v. McBane*, 359 N.W.2d 862, 865 (N.D. 1984); *Werling v. Sandy*, 17 Ohio St. 3d 45, 476 N.E.2d 1053, 1056 (Ohio 1985); *Evans v. Olson*, 550 P.2d 924, 927-28 (Okla. 1976); *Libbee v. Permanente Clinic*, 268 Ore. 258, 518 P.2d 636, 640 (Or. 1974); *Amadio v. Levin*, 509 Pa. 199, 501 A.2d 1085, 1089 (Pa. 1985); *Presley v. Newport Hosp.*, 117 R.I. 177, 365 A.2d 748, 754 (R.I. 1976); Cert. of Question of Law from U.S. Dist. Ct., 387 N.W.2d 42, 45 (S.D. 1986); S.D. Codified Laws § 21-5-1 (1987); *Fowler v. Woodward*, 244 S.C. 608, 138 S.E.2d 42, 45 (S.C. 1964); Tenn. Code § 20-5-106 (1994); *VaillanCourt v. Medical Center Hosp. of Vermont*, 139 Vt. 138, 425 A.2d 92, 95 (Vt. 1980); *Moen v. Hanson*, 85 Wash. 2d 597, 537 P.2d 266, 268 (Wash. 1975); *Baldwin v. Butcher*, 155 W. Va. 431, 184 S.E.2d 428, 436 (W. Va. 1971); *Kwaterski v. State Farm Mut. Auto. Ins. Co.*, 34 Wis. 2d 14, 148 N.W.2d 107, 112 (Wis. 1967). But *see Justus v. Atchison*, 19 Cal. 3d 564, 565 P.2d 122, 132-33, 139 Cal. Rptr. 97 (Cal. 1977); *Kuhnke v. Fisher*, 210 Mont. 114,

(Continued on following page)

of these states characterize a viable fetus as a "person" or "minor child" under their wrongful death statutes.

22. Another significant statutory change since the original decision of the Court in this cause of action is the new Texas law providing that a woman can simply abandon an "unwanted" child at a hospital, clinic or emergency room within sixty (60) days of birth with no questions asked and no threat of criminal prosecution.[42] Because of this new law, there is no longer a need to seek an abortion to avoid any "unwanted" burdens of motherhood. The effect is that the state of Texas will help the mother and is willing to assume all of the responsibilities, financial and otherwise, of raising the child. Since the Texas statute providing for dropping off an "unwanted" child was pioneered, at least forty (40) other states have enacted similar legislation.[43] In addition, Texas, along with all

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683 P.2d 916, 919 (Mont. 1984); *Egbert v. Wenzl*, 199 Neb. 573, 260 N.W.2d 480, 482 (Neb. 1977).

[42] Tex. Fam. Code Ann. §§ 262.301-262.303, and § 262.105; Texas Penal Code §22.041(h).

[43] *See* Ala. Code § 26-25-1 *et seq.* (2000); Ariz. Rev. Stat. § 13-3623.01 (2001); Ark. Code Ann. § 9-34-202 (Michie 2001); Cal. Health & Safety Code § 1255.7 (Deering 2000); Colo. Rev. Stat. § 19-3-304.5 (2000); Conn. Gen. Stat. § 17a-57 *et seq.* (2000); Del. Code Ann. tit. 16 § 907A (2001); Fla. Stat. Ann. § 383.50 *et seq.* (West 2000); Ga. Code Ann. § 19-10A-1 *et seq.* (2002); Idaho Code § 39-8201 *et seq.* (2001); § 325 Ill. Comp. Stat. 2/1 *et seq.* (West 2001); Ind. Code § 31-34-2.5-1 *et seq.* (Michie 2000); Iowa Code §233.1 *et seq.* (2001); Kan. Stat. Ann. § 38-15,000 (2000); Ky. Rev. Stat. Ann. § 405.075 (2002); La. Ch. Code art. 1701 *et seq.* (West 2000); Me. Rev. Stat. Ann. tit. 17-A § 553 (2002); Md. Code Ann. Cts. & Jud. Proc. § 5-641 (2002); Mich. Comp. Laws § 750.135 (2000); Minn. Stat. § 145.902 (2000); Miss. Code Ann. § 43-15-201 *et seq.* (2001); Mo. Rev. Stat § 210.950 (2002); Mont. Code Ann. § 40-6-401 *et seq.* (2001); N.Y. Penal § 260.03; Penal § 260.15; and, Soc. Serv. § 372-g (2000); N.C. Gen. Stat. § 7B-500 (2001); N.D. Cent. Code § 50-25.1-15 (2001); Ohio Rev. Code Ann. § 2151.3515 *et seq.* (Anderson

(Continued on following page)

other states, will pay for medical expenses associated with pregnancy for the needy. The Supreme Court in *Roe* was concerned with imposing upon the mother:

> "a distressful life and future . . . psychological harm . . . mental and physical health may be taxed by child care . . . the distress for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it."[44]

At the time *Roe* was decided, the laws providing for all medical expenses associated with pregnancy for the poor and allowing any mother to let the state bear all burden associated with raising a child did not exist, and the Court could not have known that any such law would ever be enacted. The burdens the Court was concerned about being imposed upon a mother are no longer legally hers should she choose not to bear them. In light of such a dramatic change in law, the *Roe* decision is no longer based on sound legal or factual circumstances.

2001); Okla. Stat. tit. 10 § 7115.1 (2001); Or. Rev. Stat. § 418.017 (2001); Pa. Stat. Ann. tit. 23 § 6501 *et seq.* (2002); R.I. Gen. Laws § 23-13.1-1 *et seq.* (2001); S.C. Code Ann. § 20-7-85 (2000); S.D. Codified Laws § 25-5A-27 *et seq.* (Michie 2001); Tenn. Code Ann. § 68-11-255 (2001); Tex. Fam. Code Ann. § 262.301 *et seq.* (West 1999); Utah Code Ann. § 62A-4a-801 *et seq.* (2001); Wash. Rev. Code § 13.34.260 (2002); W. Va. Code § 49-6E-1 *et seq.* (2000); Wis. Stat. Ann. § 49.192 (West 2001); Wyo. Stat. Ann. § 14-11-101 *et seq.* (Michie 2003). *See generally* Baby Moses Project at www.babymosesproject.org.

[44] 410 U.S. at 153.

FACTUAL CHANGES

23. In addition to the significant changes in decisional and statutory law since the original ruling of the Court in this cause, there have also been dramatic changes in factual circumstances and available scientific knowledge. Just as *Brown v. Board of Education*,[45] overturned *Plessy v. Ferguson*,[46] because subsequent facts showed that "separate but equal" had become inherently unjust, the new facts revealed in this Motion (in the Brief in Support of this Motion, and which will be revealed in full detail at the evidentiary hearing requested herein) demonstrate that *Roe* is no longer just, but inherently unjust, and provide the decisional basis for the Court to vacate their previous ruling in this cause.

24. At the time of the *Roe* decision, the Court stated that scientific, philosophical, and religious reasoning had not been able to determine when human life begins. The Court stated:

> We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer.[47]

In previous decisions, the Court has treated the question of when human life begins as a matter of opinion, belief, or a point of view because it has never been presented with

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[45] 247 U.S. 483 (1954).

[46] 163 U.S. 537 (1896).

[47] 410 U.S. at 181.

clear and compelling scientific evidence which allows the matter to be resolved objectively rather than through opinion. New scientific and medical evidence and advances in technology since 1973, as described herein and as will be more thoroughly presented at the evidentiary hearing requested in this cause, clearly demonstrate that human life begins at conception and therefore the previous ruling in this cause should be vacated as it would be unjust to have prospective application.[48]

25. An explosion of medical and scientific knowledge regarding the humanity of the unborn child has occurred since the Court's original ruling in *Roe*. Advances in ultrasound technology now make it possible to see even the eyebrows and eyelashes of unborn children. It is now possible to successfully perform in-utero surgery on an unborn child at very early stages of pregnancy. The viability date of unborn children has continued to advance year after year. Improvements in neo-natal medical technology now make it possible for dramatically premature infants to live when just a few years ago they would not have survived. When considering a mother and her unborn child, the fact that the Court is dealing with two persons can be very clearly and solidly proven. DNA technology, previously unavailable to the Court, can remove any doubt in this regard. If a DNA sample from the mother's arm and one from her child in the womb are sent anonymously to a DNA testing lab for identification, the lab will report that two separate humans are reflected in the samples. If samples from the mother's arm and leg, parts of her "own

[48] *See* Scientific and Medical Analysis attached hereto in Appendix, Tab H, pp. 5197-5347; *See also Agostini*.

body" were sent, testing would show only one person is involved, the same person.

26. In addition, the Court in *Roe* made a non-evidence based assumption that an idealized or even normal doctor-patient relationship would exist between a woman seeking an abortion and the physician to perform the abortion.[49] That assumption is belied by the actual practices of the abortion industry since 1973. The real life experiences of the women that have had abortions and the individuals that have worked in abortion clinics since 1973 now shows that the abortion industry does not adequately protect women.[50] The Affidavits attached hereto, the Brief in Support of this Motion, and the testimony to be presented at the evidentiary hearing requested herein reveals new factual evidence that the abortion industry does not provide women with the protections of a true doctor-patient relationship, fails to provide women with the information necessary to truly make an informed decision regarding the procedure, fails to maintain the normal standards of health, safety, and professionalism required of medical personnel, regularly misleads or deceives

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[49] 410 U.S. at 166.

[50] *See* Affidavit of Plaintiff Norma McCorvey, attached hereto in the Appendix, Tab A, pp. 1-14; *see also* the Affidavits of more than one thousand Post-Abortive Women (hereinafter the "Women's Affidavits"), attached hereto in the Appendix, Tab B, pp. 15-1410; *see also* the Affidavit of Theresa Burke, Ph.D., attached hereto in the Appendix, Tab D, pp. 1422-1667; *see also* the Affidavit of David Reardon, Ph.D., attached hereto in the Appendix, Tab E, pp. 1668-1804, Exhibits to Affidavit of David Reardon, Ph.D., Appendix Tab E, pp. 1805-4307; *see also* the Client Intake Records for Pregnancy Care Centers, attached hereto in the Appendix, Tab F, pp. 4308-5188; *see also* the Affidavit of Carol Everett, former abortion provider, attached hereto in the Appendix, Tab G, pp. 5189-5196.

women regarding the nature and development of their unborn children, and generally fails to adequately protect the mental and physical safety of women.[51]

27. New factual evidence regarding the physical and mental consequences of abortion on women, the result of more than thirty years of legalized abortion, is also available to the Court. Plaintiff Norma McCorvey never experienced an abortion herself. Norma McCorvey's baby in *Roe* was born and placed for adoption before the Supreme Court decision in *Roe* took effect.[52] Having never experienced an abortion, Plaintiff McCorvey was merely making assumptions as to the effect of abortion on herself, just as the Court did. Neither the Plaintiff herein nor the Supreme Court in 1973 could truly know beforehand what the effects of widespread legalization would be for women. Abortion was mostly rare and illegal in 1973.[53] As the attached Affidavit of Plaintiff and the Women's Affidavits reveal, assuming what an abortion is like and actually experiencing an abortion are two very different things, both physically and mentally.[54]

28. In addition to the testimony of Plaintiff Norma McCorvey (both in the attached Affidavit and her live testimony to be given at the evidentiary hearing requested herein), the attached Women's Affidavits from more than one thousand Post Abortive Women are the largest body of

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[51] *Id.*

[52] *See* Affidavit of Plaintiff Norma McCorvey, attached hereto in the Appendix, Tab A. pp. 1-14.

[53] 410 U.S. at 118, n. 2.

[54] *See* Affidavit of Plaintiff Norma McCorvey, attached hereto in the Appendix, Tab A, pp. 1-14; *see also* the Women's Affidavits, attached hereto in the Appendix, Tab B, pp. 15-1410.

direct, sworn, factual evidence about the effects of abortion on women that has ever been presented to the United States Courts. This large body of new factual evidence was not available to this Court, the Supreme Court or Norma McCorvey in 1973.[55]

29. The Women's Affidavits, the Brief in Support of this Motion, and the new factual evidence and testimony previously unavailable to the Court that will be presented at the evidentiary hearing requested herein reveal:

a) that abortion is inherently unlike any other medical procedure and the long-term physical and mental effects are devastating to women;

b) the mental and emotional consequences of abortion include increased likelihood of attempting suicide, increased rate of chemical abuse and addiction, depressive disorders, anxiety disorders, promiscuity, self-destructive behavior including self-mutilation and repeated abortions, food related disorders including anorexia and bulimia, phobias and many other severe emotional and mental disorders and suffering;

c) that abortion dramatically increases the likelihood of developing breast cancer, pelvic inflammatory disease, infertility, complications in later pregnancies, miscarriage, uterine-perforations, tubal or ectopic pregnancies, placenta previa, and a number of other physical complications;

d) that abortion is often not a voluntary decision but is the result of pressure and coercion from one or more individuals or outside circumstances;

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[55] *Id.*

e) that the normal protections of a physician-patient relationship are absent in the context of abortion;

f) that abortion is usually performed with a lack of informed consent from the patient.[56]

In light of these new facts, and others, that were not known or anticipated by the Court at the time of its original ruling, the prospective application of the decisions in *Roe* and *Doe* would be inherently unjust. It is just that the Court's judgment be vacated.

30. New facts, previously unavailable to the Court have been revealed regarding the decision made in *Doe v. Bolton* as well. Sandra Cano was the "Mary Doe" of *Doe v. Bolton*, the companion case to *Roe*. The attached Affidavit of Sandra Cano reveals new facts regarding her case that were previously unavailable to the Court.[57] Her Affidavit shows that serious fraud was committed upon the Supreme Court in her case. The affidavit of Sandra Cano reveals facts which if known at the time would probably have prevented the Supreme Court from erroneously creating the "health" exception to *Roe's* trimester framework. Her affidavit

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[56] *See* Affidavit of Plaintiff Norma McCorvey, attached hereto in the Appendix, Tab A, pp.1-14; *see also* the Affidavits of more than one thousand Post-Abortive Women (hereinafter the "Women's Affidavits"), attached hereto in the Appendix, Tab B, pp. 15-1410; *see also* the Affidavit of Theresa Burke, Ph.D., attached hereto in the Appendix, Tab D, pp. 1422-1667; *see also* the Affidavit of David Reardon, Ph.D., attached hereto in the Appendix, Tab E, pp. 1668-1804, Exhibits to Affidavit of David Reardon, Ph.D., Appendix Tab E, pp. 1805-4307; *see also* the Client Intake Records for Pregnancy Care Centers, attached hereto in the Appendix, Tab F, pp. 4308-5188; *see also* the Affidavit of Carol Everett, former abortion provider, attached hereto in the Appendix, Tab G, pp. 5189-5196.

[57] *See* Affidavit of Sandra Cano, attached hereto in the Appendix, Tab C, pp. 1411-1421.

demonstrates her own desire that the decision in her case be overturned.[58]

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff Norma McCorvey respectfully prays for the following relief:

a. the immediate re-convening of a three-judge court pursuant to 28 U.S.C. §§ 2281 and 2284;

b. an evidentiary hearing and oral argument before the three judge court;

c. an order by the three judge court that the judgment heretofore entered in favor of Plaintiff is vacated in light of changed law and factual conditions because it is no longer just or equitable to give it prospective application; and

d. such other and further relief as this Honorable Court may deem just and proper.

APPENDIX:

Tab A – Affidavit of Plaintiff Norma McCorvey, pp. 1-14
Tab B – Affidavits of More Than One Thousand Post-Abortive Women (Referred to Herein as "Women's Affidavits"), pp. 15-1410
Tab C – Affidavit of Sandra Cano, the "Doe" *of Doe v. Bolton*, pp. 1411-1421
Tab D – Affidavit of Theresa Burke, Ph. D., pp. 1422-1667
Tab E – Affidavit of David Reardon, Ph.D., pp. 1668-1804,

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[58] *Id.*

Exhibits to Affidavit of David Reardon, Ph.D., pp. 1805-4307

Tab F – Client Intake Records from Pregnancy Care Centers, pp. 4308-5188

Tab G – Affidavit of Carol Everett, Former Abortion Provider, pp. 5189-5196

Tab H – Scientific And Medical Analysis, pp. 5197-5347

Respectfully Submitted,

THE JUSTICE FOUNDATION
(Formerly Texas Justice Foundation, and still doing business in Texas as Texas Justice Foundation)
Attorneys for Plaintiff Norma McCorvey, formerly known in this cause as Jane Roe

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CERTIFICATE OF SERVICE

A true copy of the above and forgoing has been hand-delivered to: the Texas Attorney General, 300 W. 15th Street, Austin, Travis County, and the District Attorney for Dallas County, Frank Crowley Courts Building, 133 N. Industrial Blvd. LB19, Dallas, Dallas County, Texas.

SIGNED on this the 17th day of June, 2003:

/s/ Allan E. Parker, Jr.
Allan E. Parker, Jr.

CERTIFICATE OF CONFERENCE

I hereby certify that on June 12 and 13, 2003, I had a telephone conference with Ted Cruz, Solicitor General for the State of Texas regarding this Motion. An agreement could not be reached, and therefore a hearing on this matter will be required.

I hereby certify that I contacted the office of Bill Hill, District Attorney for Dallas County, Texas, on June 13 and June 16, 2003. ~~We were/were not able to reach an agreement regarding this Motion.~~ Bill Hill neither agreed to nor opposed this Motion.

SIGNED on this the 17th day of June, 2003.

/s/ Allan E. Parker, Jr.
Allan E. Parker, Jr.

[LOGO] **The Justice Foundation**

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December 20, 2004

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1 First Street N.E.
Washington, D.C. 20543

RE: Rule 32 Filing, Petition for Writ of Certiorari from the Fifth Circuit No. 03-10711; *McCorvey v. Hill* (USDC 3:03-CV-1340-N formerly 3-3690-B and 3-691-C formerly known as *Roe v. Wade*)

Dear Mr. Suter:

Pursuant to Rule 32, Norma McCorvey, the former "Roe" of *Roe v. Wade,* Petitioner in the above-styled proceeding now known as *McCorvey v. Hill,* hereby places in the custody of the Clerk, true and correct copies of affidavits which are exhibits of material forming part of the evidence in the case below. *See* Reasons for Lodging attached. The evidence was referred to by Judge Jones in her concurring opinion below. This request is unopposed by Respondent.

Specifically, it includes over 1,000 post-abortive Women's Affidavits, the Affidavits of medical experts Dr. Theresa Burke and Dr. David Reardon, and the Pregnancy Care Center Counseling Intake Records. *See* Summary of Evidence attached. The evidence demonstrates the importance of this case, the harm to women, and the need for certiorari due to changed factual and legal conditions since 1973.

Norma McCorvey will be filing her Petition for Writ of Certiorari with this Court on or before January 18, 2005. On June 17, 2003, as an original party to the original judgment in *Roe v. Wade,* Norma McCorvey filed a post-judgment Rule 60 Motion for Relief from Judgment asking that the *Roe v. Wade* opinion be reversed and the original judgment in her favor be vacated. Bill Hill is the successor to Henry Wade, District Attorney of Dallas County, who was the "Wade" of *Roe v. Wade.* Her motion for relief is based on *Agostini v. Felton,* 521 U.S. 203 (1997) on the grounds that factual and legal conditions have changed substantially since 1973 so that it is no longer just to give the case prospective application.

In the alternative, if the material is not appropriate under Rule 32.1, this letter also constitutes a request for lodging under Rule 32.3. The attached "Reasons for Lodging and Summary of the Rule 60 Motion Evidence" explains the need for lodging the evidence for assistance to the Court in evaluating the Petition for Certiorari. This request is filed more than two weeks prior to submission of the Petition pursuant to the rule.

Sincerely,

/s/ Allan E. Parker, Jr.
Allan E. Parker, Jr.
Lead Attorney for Norma McCorvey, the former Roe of *Roe v. Wade*

Cc: Bill Hill
Frank Crowley Courts Building
133 N. Industrial Blvd., LB 19
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REASONS FOR LODGING AND SUMMARY OF EVIDENCE

I. REASONS FOR LODGING

Petitioner believes it is very important to the nation, and to the Court, that the Court view all of the evidence in support of McCorvey's Rule 60 Motion, even at the Petition for Certiorari stage. Petitioner would not presume to ask the United States Supreme Court to overturn one of its decisions without preparing substantial evidence for the Court's review.

Norma McCorvey filed 5,347 pages of sworn evidence with her Rule 60 Motion. In determining whether to grant a Writ of Certiorari and hear the case, the Court should be able to look at this evidence to help it determine whether or not the case warrants the Court's full review. The evidence is extensive, so this letter must be lengthy to adequately summarize the evidence.

A Petition for Certiorari is not the appropriate vehicle to bring this exhaustive and compelling evidence to the Court. Attaching 5,347 pages of evidence as an Appendix is too bulky and voluminous to append to 40 copies of a Petition as this would require printing 200,000 pages. Filing one complete set of evidence with the Court can be accomplished with two boxes. Hard copies of the sworn evidence would then be available to those members of the Court who would wish to review the evidence before making a decision on certiorari.

Judge Edith Jones of the Court of Appeals for the Fifth Circuit, reviewed this substantial evidence in her concurring opinion and stated that she "fervently hoped that the Court would someday acknowledge such developments and re-evalute *Roe* and *Casey,* accordingly."

McCorvey v. Hill, 385 F.3d 846, 853 (5th Cir. 2004). Judge Jones' analysis and opinion are persuasive and worthy of great consideration on such an important matter, and supports the granting of certiorari. Petitioner supplies this information to give the Court such an opportunity.

Justice requires that when the original "Roe" of *Roe v. Wade* presents substantial evidence of changed legal and factual conditions, it should be heard under Rule 60. Petitioner presented over 1,000 affidavits of post-abortive women, citations to over 300 scientific studies and medical literature, reports of psychotherapists, geneticists, neonatologists, and numerous other experts, as well as persons with experience working in abortion clinics. Judge Edith Jones' analysis and supporting footnotes follow:

> McCorvey presented evidence that goes to the heart of the balance *Roe* struck between the choice of a mother and the life of her unborn child. First, there are about a thousand affidavits of women who have had abortions and claim to have suffered long-term emotional damage and impaired relationships from their decision.[6] Studies by scientists, offered by McCorvey, suggest that women may be affected emotionally and physically for years afterward and may be more prone to engage in high-risk, self-destructive conduct as a result of having had abortions.[7]

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[6] R. at 15-1410, Affidavits of More Than One Thousand Post-Abortive Women.

[7] *See* R. at 1669-1718, Affidavit of David Reardon, Ph.D. (reporting on clinical and scientific findings demonstrating that abortion is linked to emotional, physical, and psychological problems in women and criticizing the studies relied on by the *Roe* Court). *See also* C. A. Barnard, *The Long-Term Psychosocial Effects of Abortion* (Portsmouth, NH: Institute for Pregnancy Loss, 1990); W. Franz & D. Reardon,

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Second, *Roe*'s assumption that the decision to abort a baby will be made in close consultation with a woman's private physician is called into question by affidavits from workers at abortion clinics, where most abortions are now performed. According to the affidavits, women are often herded through their procedures with little or no medical or emotional counseling.[8] Third,

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Differential Impact of Abortion on Adolescents and Adults, 27(105) Adolescence 161-72 (1992); M. Gissler, et al., *Suicides after pregnancy in Finland: 1987-94: register linkage study,* BMJ, 313:1431-4 (1996); B. Lask; J. Lydon, et al., *Pregnancy Decision Making as a Significant Life Event: A Commitment Approach,* 71(1) Journal of Personality and Social Psychology, 141-51 (1996); B. Manjor & C. Cozzarelli, *Psychosocial Predictors of Adjustment to Abortion,* 48(3) Journal of Social Issues, 48(3) 121-42 (1992); W. B. Miller, *An Empirical Study of the Psychological Antecedents and Consequences of Induced Abortion,* 48(3) Journal of Social Issues 67-93 (1992); W.B. Miller, *Testing a Model of the Psychological Consequences of Abortion,* The New Civil War: The Psychology, Culture, and Politics of Abortion, (American Psychological Assoc., Linda J. Beckman & S. Maria Harvey, eds. Washington, DC 1998); H. Söderberg, et al., *Emotional distress following induced abortion: A Study of incidence and determinants among abortees in Malmö Sweden,* 79 Eur. J. Obstet. Gynecol. Reprod. Biol. 173-78 (1998); H.P. Vaughan, *Canonical Variates of Post Abortion Syndrome Elective Abortion and Pre-natal Grief* (cited by Reardon).

[8] *See, e.g.,* R. at 1721-57, Affidavit of David Reardon, Ph.D. (reporting, based on numerous studies, investigations and interviews, that women visiting abortion clinics receive little to no counseling (and what counseling is received is heavily biased in favor of having an abortion), are rushed through the process, and exposed – without sufficient warning – to health risks ranging from unsanitary clinic conditions to physical and psychological damage); R. at 1668-1804, Exhibits to Affidavit of David Reardon; Ph.D. (studies, full interviews, and other analysis supporting conclusions); R. 4308-5188 Client Intake Records from Pregnancy Care Centers (cataloging the emotional, physical, and psychological symptoms felt by hundreds of women after having an abortion who then sough post-abortion counseling); R. at 5189-96 Affidavit of Carol Everett (written testimony of a former abortion clinic worker, reporting that, in her clinic, both abortion counselors and physicians worked on commission and aggressively

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McCorvey contends that the sociological landscape surrounding unwed motherhood has changed dramatically since *Roe* was decided. No longer does the unwed mother face social ostracism, and government programs offer medical care, social services, and even, through "Baby Moses" laws in over three-quarters of the states, the option of leaving a newborn directly in the care of the state until it can be adopted.[9] Finally,

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followed a script to encourage prompt election of the procedure – even when the patient was not pregnant; that physicians usually performed 10 to 12 abortions per hour; that the clinic transported women to hospitals secretly by car when complications arose (to avoid bad publicity); and that she saw one woman die and 19 others permanently maimed by abortion procedures); R. at 10, Affidavit of Norma McCorvey (describing abortion facilities based upon her work experience in clinics).

[9] *See* ALA. CODE § 26-25-1 *et seq.* (2000); ARIZ. REV. STAT. § 13-3623.01 (2001); ARK. CODE ANN. § 9-34-202 (MICHIE 2001); CAL. HEALTH & SAFETY CODE § 1255.7 (DEERING 2000); COLO. REV. STAT. § 19-3-304.5 (2000); CONN. GEN. STAT. § 17a-57 *et seq.* (2000); DEL. CODE ANN. tit. 16 § 907A (2001); FLA. STAT. ANN. § 383.50 *et seq.* (WEST 2000); GA. CODE ANN. § 19-10A-1 *et seq.* (2002); IDAHO CODE § 39-8201 *et seq.* (2001); § 325 ILL. COMP. STAT. 2/1 *et seq.* (West 2001); IND. CODE § 31-34-2.5-1 *et seq.* (MICHIE 2000); IOWA CODE § 233.1 *et seq.* (2001); KAN. STAT. ANN. § 38-15,100 (2000); KY. REV. STAT. ANN. § 405.075 (2002); LA. CH. CODE ART. 1151 (West 2000); ME. REV. STAT. ANN. tit. 17-A § 553 (2002); MD. CODE ANN. CTS. & JUD. PROC. § 5-641 (2002); MICH. COMP. LAWS § 750.135 (2000); MINN. STAT. § 145.902 (2000); MISS. CODE ANN. § 43-15-201 *et seq.* (2001); MO. REV. STAT. § 210.950 (2002); MONT. CODE ANN. § 40-6-401 *et seq.* (2001); N.Y. PENAL § 260.03; PENAL § 260.15; and, SOC. SERV. § 372-g (2000); N.C. GEN. STAT. § 7B-500 (2001); N.D. CENT. CODE § 50-25.1-15 (2001); OHIO REV. CODE ANN. § 2151.3515 *et seq.* (ANDERSON 2001); OKLA. STAT. tit. 10 § 7115.1 (2001); OR. REV. STAT. § 418.017 (2001); PA. STAT. ANN. tit. 23 § 6501 *et seq.* (2002); R.I. GEN. LAWS § 23-13.1-1 *et seq.* (2001); S.C. CODE ANN. § 20-7-85 (2000); S.D. CODIFIED LAWS § 25-5A-27 *et seq.* (MICHIE 2001); TENN. CODE ANN. § 68-11-255 (2001); TEX. FAM. CODE ANN. § 262.301 *et seq.* (WEST 1999); UTAH CODE ANN. § 62A-4a-801 *et seq.* (2001); WASH. REV. CODE § 13.34.360 (2002); W. VA. CODE § 49-6E-1 *et seq.* (2000); WIS. STAT.

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> neonatal and medical science, summarized by McCorvey, now graphically portrays, as science was unable to do 31 years ago, how a baby develops sensitivity to external stimuli and to pain much earlier than was then believed.[10] **In sum, if courts were to delve into the facts underlying *Roe's* balancing scheme with present-day knowledge, they might conclude that the woman's "choice" is far more risky and less beneficial, and the child's sentience far more advanced, than the *Roe* Court knew.** *McCorvey v. Hill,* 385 F.3d 846, 850-52 (5th Cir. 2004) (Emphasis added).

Rule 60(b) is the appropriate vehicle for the Supreme Court to review one of its own prior decisions. *Agostini v. Felton,* 521 U.S. 203 (1997). According to *Agostini,* only the Supreme Court can overturn one of its own prior decisions. This Court stated in *Agostini*:

> We do not acknowledge, and we do not hold, that other courts should conclude our more recent cases have, by implication, overruled an earlier precedent. We reaffirm that "if a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should

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ANN. § 49.195 (WEST 2001); WYO. STAT. ANN. § 14-11-101 *et seq.* (MICHIE 2003).

[10] *See* R. 5197-5347 (submissions from numerous individuals, each holding an MD or PhD, reporting that unborn children are sensitive to pain from the time of conception, and relying on peer-reviewed, scientific journals). *See, e.g.,* Mann et al., *Prevention of Allogeneic Fetal Rejection by Tryptophan Catabolism,* 281 Science 1191 (1998); P.W. Mantyh, *Inhibition of Hyperalgesia by Ablation of Lamina I Spinal Neurons Expressing the Substance P Receptor,* 278 Science 275 (1997) (cited by Dr. David Fu Chi Mark Ph.D).

> follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." *Rodriguez de Quijas,* 490 U.S. at 484. Adherence to this teaching by the District Court and Court of Appeals in this case does not insulate a legal principle on which they relied from our review to determine its continued vitality. The trial court acted within its discretion in entertaining the motion with supporting allegations, but it was also correct to recognize that the motion had to be denied unless and until this Court reinterpreted the binding precedent. *Agostini v. Felton,* 521 U.S. 203, 238 (1997).

Judge Jones, in her concurring opinion summarized the potential terrible injustice as follows:

> At the same time, because the Court's rulings have rendered basic abortion policy beyond the power of our legislative bodies, the arms of representative government may not meaningfully debate McCorvey's evidence. The perverse result of the Court's having determined through constitutional adjudication this fundamental social policy, which affects over a million women and unborn babies each year, is that the facts no longer matter. This is a peculiar outcome for a Court so committed to "life" that it struggles with the particular facts of dozens of death penalty cases each year.
>
> Hard and social science will of course progress even though the Supreme Court averts its eyes. It takes no expert prognosticator to know that research on women's mental and physical health following abortion will yield an eventual medical consensus, and neonatal science will push the frontiers of fetal "viability" ever closer to the date of conception. One may fervently hope that the

> Court will someday acknowledge such developments and re-evaluate *Roe* and *Casey* accordingly. That the Court's constitutional decision-making leaves our nation in a position of willful blindness to evolving knowledge should trouble any dispassionate observer . . . *McCorvey v. Hill,* 385 F.3d 846, 852-53 (5th Cir. 2004) (Jones, J., concurring).

Counsel for Norma McCorvey recognizes that normally such a voluminous record would be more appropriate for a trial court than the Supreme Court. Again, because of the unique nature of *Roe v. Wade,* and the fact that it is a Supreme Court decision which is being reviewed under Rule 60 based on changes in legal and factual conditions, counsel believes it is a special obligation of this Court to carefully consider the evidence. The trial judge did not look at the evidence, on grounds the appellate court later said were error. The Court of Appeals for the Fifth Circuit cannot reverse *Roe.* Judge Jones said she fervently hoped this Court would re-evaluate *Roe v. Wade.* This Court can make a more well-informed decision on that point if it has the opportunity to see and review the evidence. In the normal case, one can tell what the legal questions are and whether they are important without looking at the Record. But in this case, only the Supreme Court can determine if factual and legal conditions have substantially changed since 1973, and only a substantial amount of evidence could demonstrate to the Court that there is a "manifest injustice". *Agostini v. Felton,* 521 U.S. 203 (1997). Therefore, counsel sincerely believes it is important at the Petition stage, and worth the Court's time, for the Supreme Court to have the most important sworn evidence before it when it decides whether or not to grant the Petition for Writ of Certiorari.

Granting this Request for Lodging will mean that the Petition for Certiorari will be much shorter and more manageable for the Court and its staff to handle. The printer has already indicated that extra time would be required to typeset all of the evidence and put it in a regular appendix in Petition form at a cost of more than $50,000 just for the Women's Affidavits alone.

In summary, extensive sworn evidence has been provided in support of the Rule 60 Motion because this Court is the only court that is capable of re-evaluating *Roe*. Reversing *Roe v. Wade* is not a pure question of law, but requires understanding of the facts, medical research and women's actual experience of abortion. Therefore, this Court should have the evidence before it when it makes the initial determination whether to hear the case and the following is a summary of some of the items in the voluminous record.

II. SUMMARY OF EVIDENCE

A. OVER 1,000 WOMEN'S AFFIDAVITS – There are over 1,000 affidavits from women who have actually experienced abortion. These constitute R. at 000016-001410. *This is the largest body of direct, sworn testimony in the world on the effects of abortion on women.* This will help the Court to actually understand how abortion affects the women that the Court wants to protect and serve. As far as counsel can determine, it is the largest body of evidence the Court has ever had in determining the effect of abortion on women, particularly through actual sworn testimony.

As the Affidavits attest, more than 1,000 witnesses endured great pain and sacrifice to give this testimony because they wanted the Court to know the

truth about what abortion did to them. If abortion is a good thing for women, the Court should know it. If abortion is a bad thing for women, the Court should know that as well. Abortion is such a tragic and secret thing, that many of the women who testified would only do so using initials rather than using their full names. Many women agonized for months over whether to even participate in the affidavit process. They had to be willing to expose their most painful, private, personal, and secret experiences, and be willing perhaps to be cross-examined in a public courtroom. They were willing to sacrifice to tell the Court the truth about abortion. Who better than women who have experienced abortion to tell the Court the reality of abortion in American abortion clinics today?

It is extremely important for the Court to be able to view as many of these affidavits as will assist the Court. The cost of reproducing them in an appendix would be more than $50,000 through Cockle Printing Company. These affidavits personalize and humanize the reality of abortion in a way statistics can never portray. By providing these affidavits, the women are begging the Court not to indulge in what Judge Jones refers to as "willful blindness". They are eager to see other women protected from the danger and harm they have suffered. They are eager for the Court to know the truth which heretofore had been painfully hidden in the secret places of their hearts. As far as counsel can determine, no woman filled out an affidavit without crying about it because of the tremendous pain involved. Whatever one's beliefs about abortion, the Court should approach this evidence with an open mind and a compassionate heart.

The Court must be prepared to appreciate the diversity of post-abortion responses. Every woman is different. Abortion touches a person's life on many

levels. It impacts a woman's view of herself in medical, political, religious, philosophical, social and many other ways. Because it affects a woman's life in so many dimensions, it is a very complex experience. This is why it is exceptionally difficult for women to understand, process, and reconcile this experience with who they are and who they want to be. Not reviewing the complexity of this evidence reduces women to stereotypes. If one is an advocate of abortion rights, it may be painful to hear how abortion has scarred and injured some women. One may feel the impulse to reject the truth of these testimonies out of fear that such information could threaten the legal status of abortion or inappropriately discourage women from making the "right choice" to abort. However, justice requires that one set aside one's political and ideological goals, at least while reviewing the evidence. The fact that abortion has caused so much division and turmoil in our country's political life clearly suggests that it can also cause internal divisions and anxiety in a woman's life. The real experiences of women in abortion clinics, rather than judicial theory and the unverified assumptions of *Roe v. Wade,* should guide this Court in the future. In sum, we respectfully request the over 1,000 Women's Affidavits be read as part of this important decision.

B. AFFIDAVIT OF DR. TERESA BURKE, Ph.D. – Dr. Burke has specialized in treating women struggling with post-abortion issues, through individual counseling and group therapy sessions, since 1986. Her affidavit is extremely important to understanding the context of the more than 1,000 post-abortive women's affidavits and the variety of complex psychological reactions that women in general experience as a result of abortion. Her affidavit is 244 pages long. (R. at 001423-001666). Abortion reaction is not a simple subject because of the large variety of

circumstances. Women's psycho-social history is unique to each woman, and the adverse consequences of abortion take a variety of forms. It is too extensive to be reprinted in an appendix for a Petition, but it is also too important to be ignored, especially in such an area as abortion where only the Court can now protect women. It is based in large part on the findings set forth in her book, THERESA KARMINSKI BURKE AND DAVID C. REARDON, FORBIDDEN GRIEF: THE UNSPOKEN PAIN OF ABORTION, Acorn Books (2002). Drawing on the experience and insights of hundreds of her clients, Dr. Burke shows how repressed feelings about abortion may be acted out through self-destructive behavior, broken relationships, obsessions, eating disorders, parenting difficulties, and other emotional or behavioral problems. She also explores the cultural and psychological obstacles to post-abortion healing. She examines why friends and families and society erect walls of silence around a loved one's grief. She also reveals how society and this Court can and should listen to those who are struggling with past abortions.

After abortion, many women face a daily internal battle between condemning and defending themselves. Dr. Burke notes the many ways in which abortion causes conflict. It fragments political parties, churches, schools and neighborhoods. It divides families. It pits husbands against wives, mothers against daughters, sisters against sisters. It divides the academic and research community. These very conflicts in society, of which this Court is so keenly aware, also reflect the internal discord that occurs within the women themselves. Dr. Burke explains how the woman herself may be deeply conflicted between desires to keep a child and feelings of helplessness that she cannot care for a child. She may want a child and her partner or her parents may

want her to get rid of the child. She may want to abort and others she loves want her to keep the child. She may have even deeply wanted to abort the child herself, and later find herself with feelings of condemnation and self-guilt over having made that decision. The same painful torment and controversy that divides America so deeply today, divides women internally. Just as the mere discussion of abortion often produces anger and arguments in society, the abortion experience can produce anger and rage in many women. On the other hand, just as many members of society avoid discussing abortion altogether because they do not want to deal with the painful emotions it can involve, many women who have abortions repress their deepest feelings and this repression can lead to severe psychological disorders.

Just as the Court will be greatly benefited by reviewing the more than 1,000 Women's Affidavits, the Court will be greatly aided by Dr. Burke's research, expert opinions, analysis, and explanation of the varied reactions that women undergo. People who have not experienced abortion, like the Court, cannot fully understand it. They cannot generalize from their own life experiences as to how they would feel. Even for the post-abortive women, Dr. Burke demonstrates putting them in touch with their feelings is fundamental to recovery, however, this can be a difficult process because any discussion of these unwanted emotions generates tremendous resistance, denial and fear. Even pro-abortion groups such as the National Organization of Women and Planned Parenthood will freely admit that abortion is a difficult and tragic decision. *See e.g.,* Planned Parenthood Corpus Christi Board Member who stated "Abortion is an agonizing choice." "*My Choice*", TEXAS MONTHLY, at 93 (Dec. 2004). That is why they argue the decision should be solely between a woman and her doctor.

Yet very few people are willing to look at the long term consequences of this admittedly "tragic" decision. Dr. Burke's affidavit also explains why the fact that abortion hurts women is so often hidden by the women themselves. She explains how the truth is hidden from women, and by women. She explains how the fact that abortion is legal makes women presume it is safe. It is also assumed by women to be morally "right" because the Court has approved it, even though the Court knows it is not trying to make moral decisions for individual women. *See* Women's Affidavits (R. at 000016-001410). Yet many women feel tremendous guilt after experiencing abortion.

Dr. Burke explains how women who begin to explore these feelings are met with repression by other members of society. If a mother took her daughter to have an abortion because she thought it was the right thing to do, and her daughter afterwards begins to cry and complain about the abortion, the mother is filled with extreme anxiety and emotions which are difficult to process. The post-abortive women usually experience repression and denial such as, "You'll get over it." "Don't worry, it was the best thing. You had to do it." "Get on with your life." The suffering abortion victim is repressed by society and often represses herself again.

Dr. Burke explains the effects of the abortion clinic bias in favor of abortion. If a woman in a crisis pregnancy wants to place her child for adoption, by law she is protected from undue influence by the prospective adopting couple whose interests are presumed to be in conflict with the woman's. That is why we have a requirement for neutral adoption agencies, and why even a woman's written agreement to do with her body as she wishes and place her child for adoption is not binding until 10 days after birth in most cases. We recognize in the crisis pregnancy that leads

to adoption that women are emotionally vulnerable, particularly susceptible to outside influence, and that their decisions on whether or not to keep the baby may change, sometimes frequently, over the months of pregnancy and even after birth. The law protects women and as a society we help women in these vulnerable pregnancies. The law particularly tries to keep her from being influenced by the people who would profit from her decision, the adopting couple or the agencies. The law forbids financial incentives or pressure on her. However, a woman in a vulnerable or crisis pregnancy who is considering to terminate her parental rights through abortion is at the mercy of people with a profit motive for counseling her to make a quick decision to get an abortion. *See* Women's Affidavits (R. at 000016-001410).

Dr. Burke's affidavit also talks about the politicization of abortion consequences research in this country and compares abortion trauma to that of women's "hysteria" in the 1800's, shell-shock victims in World War I, and Vietnam veteran's trauma which eventually led to post-traumatic stress disorder diagnoses. Dr. Burke explains how as a society we know how to debate abortion as a political issue, but we do not know how to talk about it on an intimate and personal level. She explains there is no social norm for dealing with an abortion. There are no Hallmark cards for friends who have had an abortion, declaring either sympathy or congratulations. We do not send flowers. We do not have ceremonies. There are no social customs or rules of etiquette governing acknowledgment of an abortion. Instead, it is ignored or hidden. The September 2003 issue of Glamour Magazine shows how abortionists themselves are divided by political fear over whether to recognize post-abortion trauma. The Glamour Magazine article notes that there are many abortionists, some of

whom have combined into a group called the November Gang, who want to openly recognize the grief that women feel. They want to help their patients write letters of forgiveness to their departed children. Others want to continue to deny the existence of abortion grief, primarily for fear that it will lead to restrictions on abortions. Dr. Burke also describes how the same conflict is present in professional associations on the issue of abortion.

Dr. Burke provides extensive analysis and evidence of how women react to abortion. She states an important concept to remember in trying to understand post-abortion reactions is the concept of approach-avoidance conflicts. By definition, a trauma is an overwhelming experience that is simply "too much" for a person to handle or understand. All sides admit that the abortion decision is a "tragic" emotional decision. Even some of the strongest advocates of *Roe* want abortion to be safe, legal and "rare". Dr. Burke explains the ordinary response to a trauma is to banish the experience from one's mind – to run away from it, hide it or repress it. It is natural for trauma victims to try and forget and put their horrible experience behind them forever.

In conflict with this avoidance reaction, however, is the equally powerful human need to understand one's experiences and find meaning in them. Thus, Dr. Burke shows while a person may consciously choose to avoid thinking about the traumatic experience, his or her subconscious insists on calling attention to the trauma. The subconscious knows that an unresolved trauma is unfinished business. To be conquered, the horror of the traumatic event must be exposed, proclaimed and understood. This tension between the need to hide a trauma and the need to expose it is at the heart of many of the psychological symptoms resulting from abortion. Dr. Burke shows

many of the women want to avoid and deny the problems while at the same time seeking resolution and peace of heart. This can result in distortions between women and their children, their partners, other family members, and others in society. Dr. Burke explains some of the human defense mechanisms women experience in various ways such as suppression, repression, rationalization, reaction formation, introjection, undoing, projection, provocative behavior, displacement, conversion, withdrawal, regression, deflection, and denial.

Dr. Burke summarizes and explains, with examples, how these defense mechanisms operate to prevent or disguise the experience of painful emotions. But they always exact a price. In many cases, they can create more problems than they solve. Here are just a few of the pitfalls inherent in defense mechanisms which can be seen in human terms throughout the more than 1,000 Women's Affidavits and Dr. Burke's Affidavit.

- First, defense mechanisms consume a great deal of emotional and physical energy. Prolonged use of defensive coping mechanisms may even weaken women's immune systems, making them more vulnerable to heart disease, cancer and other stress-induced illnesses.

- Second, defense mechanisms can distort women's perception of reality. When women do not see or understand themselves and others clearly, they are doomed to fail repeatedly in dealing with their problems in a productive way.

- Third, these defenses do not filter out just painful emotions. Unfortunately, they

serve as defenses against all emotions. The women frequently feel "numb", "desensitized", etc. The more defensive mechanisms are used to protect from painful feelings, the more women are cutting themselves off from experiencing the gratifying, heartwarming, joyous, and cheerful feelings that make like meaningful.

- Fourth, these defenses themselves can give rise to major mental health problems. These can include suicidal behavior, substance abuse, eating disorders, repeated abortions, traumatic re-enactments, and the repetition of a disturbing relationship and events to name just a few of the myriad of symptoms described throughout her Affidavit.

- Finally, Dr. Burke explains defense mechanisms simply do not cleanse negative experiences. They protect from unwanted emotions, but they do not eliminate painful memories and feelings. These problems are concealed, not resolved. As more and more pain is accumulated and hidden away, women will suffer from anxiety, nervousness, agitation, and irritability. Trauma victims may become emotionally unpredictable. Whenever the defenses falter, post-abortive women experience a roller coaster of emotional explosions. It is impossible to fix a leaky pipe until you first acknowledge that it is leaking. The same is true of unwanted emotions. If injured women deny they exist, they deny themselves the chance to heal. Defense mechanisms are not a cure; they are only a series of delaying tactics.

Dr. Burke's affidavit explains why, on average, women are not able to begin to process these unwanted emotions from abortion until 8-10 years after their abortions. She explains such things as anniversary reactions (either abortion date or anticipated birth date) because these are connectors to past trauma. Some women have reactions to their monthly cycle, or the birth and death of babies, some women create baby substitutes, or find themselves totally unable to connect with babies and their other children.

Dr. Burke also explains how many women feel that God will punish them for having an abortion. Whether one believes in God or not, it is a fact that 90% of the women in America believe in a God. Therefore, unlike other medical procedures, women may feel they need to punish themselves or expect to be punished by God as a result of abortion. This type of reaction is apparent in some of the Women's Affidavits.

Dr. Burke also explains the link between sexual abuse and abortion and abortion and suicide. Abortion often results in eating disorders which are increasing throughout our culture at epidemic proportions.

In summary, Dr. Burke's affidavit is of vital importance to understanding how abortion affects the mental health of millions of women in this country, and future millions if *Roe* is not reevaluated. It is extensive, though not cumulative, or repetitious, but succinctly summarizes and outlines a vast human complexity with which the Court must be familiar if it is to make an informed, reasoned, scientific and just decision about the prospective application of the

abortion ruling. Dr. Burke's Affidavit can be found in the Record at 001423-001666.

C. **AFFIDAVIT OF DR. DAVID REARDON, Ph.D.** – The Affidavit of Dr. David Reardon, is itself approximately 136 pages long, (R. at 001669 – 001804), supported by over 2,000 pages of exhibits (R. at 001805-004307). Dr. Reardon has presented or published more than 30 academic papers at academic conferences or in journals including the American Journal of Obstetrics and Gynecology, the British Medical Journal, the American Journal of Orthopsychiatry, the Canadian Medical Association Journal, the Journal of Child Psychology and Psychiatry, and the Southern Medical Journal. He has been actively engaged in researching women's decision-making processes regarding abortion and their psychological and physical reactions to abortion since 1982. He has also authored numerous books on the subject. He is one of the world's leading experts on the effects of abortion. In this single affidavit, he has collected and presented over 300 citations to medical and scientific literature concerning the consequences of abortion. His affidavit is too extensive to be reprinted in a Petition, but is probably the single most comprehensive reference in the world to scientific and medical evidence on the adverse consequences of abortion to women in a single document. The affidavit establishes and documents the following:

(1) The death rate associated with abortion was not accurately known in 1973. The best research available today shows that death rates associated with abortion are significantly higher than death rates associated with childbirth. These higher mortality rates serve as an indication of the overall

negative effect of abortion on women's health and well-being.

(2) On average, abortion has a significant and negative impact on women's mental health.

(3) The majority of women having abortions are at risk of experiencing significant negative psychological reactions.

(4) Many, perhaps most, women who consent to an abortion find themselves in a vulnerable situation where their normal views and preferences may be distorted or manipulated by those advising them.

(5) Abortion providers do not generally offer adequate screening for risk factors nor do they provide unbiased counseling for informed decision-making. Legal obstacles make it difficult or impossible to hold abortion providers properly liable for providing adequate screening and counseling.

(6) Abortion providers have mostly ignored or abdicated their obligation to protect a woman from making an uninformed and fully consenting decision to abort even if the woman is at high risk of suffering complications or has little prospect of benefiting from the abortion being considered.

(7) In most cases, abortions are being performed not because the physician made a medical *recommendation* based on an informed evaluation of the known risks and benefits of abortion given each patient's unique psychosocial profile. Instead, the abortion is simply performed on the basis of the woman's request for it. Since the woman's request is often driven by elements

of duress and fear, proper screening would reveal that the requested procedure may be contra-indicated. Incalculable numbers of women have been exposed to, and suffered, avoidable injuries.

(8) Abortion counseling is inherently flawed by conflicts of interest, such as prejudice, greed, and a commitment to abortion as the preferred solution, or ideological commitment to population control or social engineering. These factors expose women to manipulation and deceit by persons who appear to be in a position to give them good counsel.

(9) There is no statistically validated medical evidence that abortion is ever more likely to be beneficial to any group of women in any given circumstance.

(10) Abortion places subsequent wanted children at increased risk of miscarriage, premature delivery, congenital complications, development hardships, and child abuse. These abortion associated problems place additional burdens on families and society that were not expected or understood prior to 1973.

(11) Abortion deprives women of medical and health benefits of childbirth that were not known prior to 1973.

(12) Legal abortion is not the best solution to the problem of *illegal abortions*. Instead, legalized abortion increases the total number of injuries suffered by women due to greater exposure to abortion's inherent risks.

(13) Psychological injuries related to abortion reflect, at least in part, reactions to the destruction of the maternal-child relationship.

(14) In moments of confusion, ignorance and duress, abortion often involves the destruction of wanted children.

(15) Even in cases of rape or incest, abortion is harmful to women and surprisingly and counter-intuitively most often unwanted by women once they are in that tragic circumstance.

Dr. Reardon is familiar with the worldwide literature on the subject of abortion consequences and has provided an incalculable service for the Court in preparing this affidavit. It is extremely important that the Court have this medical literature available to it before making a decision affecting the health of millions of women. By constitutionalizing abortion, the Court has taken away from legislatures any normal consumer protection role they might play after reviewing this scientific literature and acting upon it. Only the Supreme Court now has the authority to make medical and scientific decisions for our country in the area of abortion. Counsel believes it is extremely important that the Court have available for consideration the entire affidavit.

D. **PREGNANCY CARE CENTER COUNSELING INTAKE RECORDS** – The Record also includes sworn business intake forms from pregnancy care centers and post-abortion counseling groups which ask women their individual reactions to abortion. This also shows the large numbers and types of reactions to abortion. The intake forms can be found in the Record at 004309 - 005188.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Norma McCorvey, formerly known as JANE ROE,	§	
Plaintiff,	§	CIVIL ACTION
v.	§	No. 3:03-CV-1340-N
WILLIAM "BILL" HILL, Dallas County District Attorney,	§	(formerly 3-3690-B and 3-3691-C
Defendant.	§	

MOTION FOR RECONSIDERATION AND TO AMEND ORDER DENYING RULE 60 MOTION

(Filed Jul. 3, 2003)

TO THE HONORABLE COURT:

NOW COMES, NORMA MCCORVEY, formerly known in this Court as Jane Roe, the Plaintiff herein (hereinafter referred to as "Plaintiff"), and respectfully requests reconsideration of her Rule 60 Motion which was denied for lack of timeliness on June 19, 2003 and to amend this Court's Order under Rule 59(e). In addition, the Court ruled that the Rule 60 Motion does not require a three-judge court and reconsideration is also requested of that decision.

1. Pursuant to the court's inherent equity power and Federal Rules of Civil Procedure, Rule 59(e), Plaintiff files this Motion to reconsider the Court's decision in this case of June 19, 2003. Regardless of whether this Motion is referred to as a "Motion for Reconsideration" or a "Motion to Amend or Alter" the final Order of this Court, it is

properly filed under Rule 59(e).[1] Plaintiff hereby makes this Motion witnin the ten-day deadline and seeks reconsideration on errors of law and fact and manifest injustice.[2] Plaintiff objects to the decision being made prior to the convening of a three-judge court and by this Motion does not waive her objection to her jurisdictional complaint.

FACTUAL HISTORY AND PROCEDURAL BACKGROUND

2. On June 17, 1970, a three-judge court issued a ruling in this cause declaring the Texas abortion laws that prohibited abortions except to save the life of the mother unconstitutional.[3] On January 22, 1973, the United States Supreme Court affirmed this Court's judgment.[4] On the same day, the United States Supreme Court also ruled in a companion case to *Roe, Doe v. Bolton.*[5]

3. On June 17, 2003, Plaintiff filed a Rule 60 Motion for Relief from Judgment. That Motion included a request for a three-judge court, request for evidentiary hearing and oral argument, provided case law and authorities for its Motion, and details of the changes in both legal and factual conditions that have occurred in the last few years

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[1] Bass v. United States Dep't of Agriculture, 211 F.3d 959 (5th Cir. 2002).

[2] Servants of Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000) (stating grounds for order Rule 59(e) as the need to correct clear error or prevent manifest injustice).

[3] Roe v. Wade, 314 F. Supp. 1217 (1970) (hereinafter "District Court Roe").

[4] Roe v. Wade, 410 U.S. 113 (1973) (hereinafter "Roe").

[5] 410 U.S. 179 (1973) (hereinafter "Doe")

including changes occurring in 2003. In addition, the Motion and Supporting Brief included over 5,000 pages of affidavit evidence from Norma McCorvey, with over 1,000 affidavits of post-abortive women, and affidavits from scientific and medical experts.

4. Two days later, on June 19, 2003, this Court issued its Order denying the Rule 60 Motion. The Order stated that the Rule 60 Motion does not require a three-judge court and that Plaintiff did not bring her Motion within a reasonable time.[6]

5. This Motion for Reconsideration respectfully seeks reconsideration of these issues based on errors of law and facts and manifest injustice. The Court should have granted Plaintiff's Rule 60 Motion because:

(a) the Motion was filed within a reasonable time period;

(b) the Court should have ruled in the alternative that a three-judge court was required and referred it to that court;

(c) other procedural issues are not a bar to Plaintiff's Motion;

(d) Plaintiff was denied basic due process by a denial of a hearing or an opportunity to respond; and,

(e) the Court should have granted the Motion based on the evidence because there was substantial evidence of change in factual and legal conditions to find that prospective application was unjust.

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[6] Order Denying Rule 60(b) Motion at 1 (June 19, 2003).

REASONABLE TIME

6. Plaintiff respectfully contends that this Court has mischaracterized her Motion. The characterization of Plaintiff's Motion is important. It is not based on "newly discovered evidence." Such a motion must be filed within a very short period of time and may affect the justice or injustice of the original judgment. However, the Rule 60 Motion is a much more rare but still appropriate form of relief. It is based on changes in factual conditions and/or legal conditions which make a judgment, that may have once been just at the time the decision was entered, no longer just due to changed factual and legal conditions.[7] In such a case, the Motion should not be filed until the factual and/or legal conditions have changed to such a degree that "adherence to that decision would undoubtedly work a 'manifest injustice'."[8] The Court should temper finality with justice,[9] and a litigant should not be penalized for waiting for factual and legal conditions to be changed so substantially that they would meet the standard in Rule 60 that it is no longer "equitable that the judgment should have prospective application." "Because Rule 60(b) is remedial, discretion of the district court to deny a Rule 60(b) motion is limited by significant policy

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[7] See Agostini v. Felton, 521 U.S. 203, 215 (1997).

[8] *Id* at 236.

[9] Stipelcovich v. Sand Dollar Marine, 805 F.2d 599 (5th Cir. 1986). The court stated: "The rule attempts to strike a balance between two conflicting goals, the finality of judgments and the command of the court to do justice. Thus, 'although the desideratum of finality is an important goal, the justice-function of the courts demands that it must yield, in appropriate circumstances, to the equities of the particular case in order that the judgment might reflect the true merits of the cause.'" *Id.* at 604 (citations omitted).

considerations."[10] The reasoning is that the court's power in a Rule 60 Motion has been defined as a "grand reservoir of equitable power to do justice in a particular case."[11] To this end, the Rule 60 Motion should be "construed liberally to do substantial justice."[12]

7. The United States Supreme Court has rejected the mere passage of time as the standard when there have been significant changes in factual or legal conditions.[13]

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[10] In re Roxford Foods, Inc., 12 F.3d 875, 881 (9th Cir. 1993).

[11] Woods v. Kenan, 173 F.3d 770, 780 (10th Cir.), *cert denied,* 528 U.S. 878 (1999); Pierce v. Cook & Co., Inc., 518 F.2d 720 (10th Cir. 1975), *cert. denied,* 423 U.S. 1079 (1976).

[12] Fackelman v. Bell, 564 F.2d 734, 735 (5th Cir. 1977) (stating the "purpose of the motion is to permit the trial judge to reconsider such matters so that he can correct obvious errors or injustices . . . "*Id* at 736. In Fackelman, the court indicated that the district court properly denied the Rule 60 Motion because appellant could have raised the issues via appeal but had failed to do so. *Id.* at 737. This is not the case in Plaintiff Norma McCorvey's request for relief under Rule 60.

[13] Although this Court cited examples of weeks and months and not decades as prohibitive, both the United States Supreme Court and lower federal courts have allowed cases longer than that due to the surrounding circumstances of the case that would justify a Rule 60 Motion. *See, e.g.,* Agostini v. Felton, 521 U.S. 203 (1997) (12 years); United States v. Board of School Commissioners, 128 F.3d 507 (7th Cir. 1997) (30 years); Rufo Inmates of the Suffolk County Jail, 502 U.S. 367 (1992) (10 years); Railway Employees v. Wright, 364 U.S. 642 (1961) (12 years); Charter Township of Muskegon v. City of Muskegon, 303 F.3d 755 (6th Cir. 2002) (28 years); Alliance to end Repression v. City of Chicago, 237 F.3d 799 (7th Cir. 2001) (20 years); United States v. Karahalias, 205 F.2d 331 (2d Cir. 1953) (17 years); Federal Deposit Ins. Corp. v. Castle, 781 F.2d 1101 (5th Cir. 1986) (2 years); Ruiz v. Johnson, 154 F. Supp. 2d 975 (S.D. Tex. 2001) (20 years); United States v. Columbia Artists Mg., 662 F. Supp. 862 (S.D.N.Y. 1987) (32 years). In desegregation cases, the federal courts have also granted relief from decrees issues decades ago due to changes in social and factual conditions. See, e.g., Belk v. Charlotte-Mecklenburg Board of Education, 269 F.3d 305 (4th Cir. 2001) (30 years); People Who Care v. Rockford Board

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"The court cannot be required to disregard significant changes in law or fact if it is satisfied that what it has been doing has been turned through changed circumstances into an instrument of wrong."[14] In fact, a "court errs when it refuses to modify an injunction or consent decree in light of such changes."[15] Therefore, lapse of time is not determinative,[16] but the court must make a flexible application depending on the facts of each case.[17]

8. The Motion must be brought within a "'reasonable time' . . . which depends upon the particular facts and circumstances of the case."[18] Thus, the court cannot apply a strict time limitation because the "particular facts and circumstances" of each case will be different, thereby

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of Education, 246 F.3d 1073 (7th Cir. 2001) (30 years); Manning v. School Board of Hillsborough, 244 F.3d 927 (11th Cir. 2001) (30 years); NAACP v. Duval County School, 273 F.3d 960 (11th Cir. 2001) (41 years); United States v. Texas, 158 F.3d 299 (5th Cir. 1998) (27 years); Lee v. Butler County Board of Education, 183 F. Supp. 2d 1359 (M.D. Ala. 2002) (39 years).

[14] Agostini v. Felton, 521 U.S. 203, 215 (1997) (*quoting* Railway Employees v. Wright, 364 U.S. 642, 647 (1961)).

[15] *Id.*

[16] Margoles v. Johns, 798 F.2d 1069, 1073 (7th Cir. 1986) (stating the lapse of specific period of time between entry of judgment and ruling of the motion for relief is not determinative but depends on the circumstances), *cert. denied,* 482 U.S. 905 (1987).

[17] Lairsey v. Advance Abrasives Co., 542 F.2d 928, 931 (5th Cir. 1976) (stating reasonable time by its nature invites flexible application depending upon the facts in each case).

[18] Traveler's Ins. Co. v. Liljeberg Enterprises, Inc, 38 F.3d 1404, 1410 (5th Cir. 1994); Margoles v. Johns, 798 F.2d 1069, 1073 (7th Cir. 1986), *cert. denied,* 482 U.S. 905 (1987); Lairsey v. Advance Abrasives Co., 542 F.2d 928, 932 (5th Cir. 1976); In re Pacific Far East Lines, Inc, 889 F.2d 242 (9th Cir. 1989).

requiring an analysis of when those facts and circumstances changed. Without making that assessment, this Court concluded that based merely on the passage of time that Plaintiff's Motion "was not made within a reasonable time due to the length of time alone."[19] Plaintiff respectfully submits that this was clear error. Plaintiff also submits that the appellate courts have criticized lower courts for failing to carefully consider each motion on its merits as recently indicated by the Court of Appeals for the Fifth Circuit:

> We notice that the district judge in this matter, like some other district judges in this circuit, has the custom of usually, or even always, prohibiting litigants from filing motion for reconsideration or relief, such as those contemplated by FED. R. CIV. P. 59 and 60. No judge has that authority.
>
> Accordingly, we direct the judge in this case and others in this circuit, to entertain post-judgment motions as contemplated by the rules. Moreover, the districts must *carefully consider* each such motion *on its merits,* without begrudging any party who wishes to avail himself of the opportunity to present such motions in accordance with the rules of procedure and with the standards of professional conduct.[20]

9. In her Motion, Plaintiff explained valid reasons for the length of time. Courts have denied Rule 60 motions which could have been brought earlier, but the movant

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[19] Order Denying Rule 60(b) Motion at 6 (June 19, 2003).

[20] Collins v. Morgan Stanley Dean Witter, 224 F.3d 496, 502 (5th Cir. 2000) (emphasis added).

gave no valid reasons for delay.[21] Unlike these cases, Plaintiff gave substantial evidence in its Original Motion and Supporting Brief on why it would not have been reasonable to file this Motion sooner.[22] Her entire Motion is

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[21] *See, e.g.,* Farm Credit Bank of Baltimore v. Ferrera-Goitia, 316 F.3d 62, 66 (1st Cir. 2003) (looking at six year delay between entry of default judgment and bringing Rule 60 motion without movants offering reason for delay) First Republic Bank Fort Worth v. Norglass, Inc., 958 F.2d 117, 119 (5th Cir. 1992) (plaintiff had sixty days to appeal the decision, but did not take steps to do so);

[22] Following is evidence from Plaintiff's original supporting brief and motion attesting as to why it would not have been reasonable to file this motion sooner: Changes in law:

(a) Since its original ruling in *Roe,* the Supreme Court has significantly undermined the legitimacy of that decision through its decisions in *Webster v. Reproductive Services, Planned Parenthood v. Casey,* and *Washington v. Glucksberg.* Motion, page 7-9, paragraph 15-18. Brief, pages 8-9.

(b) Recent changes in the law of federalism would now justify returning the decision whether or not to allow abortion to the individual states. Motion, pages 9-10, paragraphs 19-20. Brief, pages 8-15.

(c) The overwhelming majority of states now permit some form of legal recovery for the loss of a child in the womb. Motion, page 10, paragraph 21. Brief, pages 17-19.

(d) Under recently enacted "Baby Moses" laws, women in 40 states may be relieved from the burdens of motherhood since the state will assume the responsibility of raising the child. Motion, page 12, paragraph 22. Brief, pages 21-24.

Changes in Factual Conditions:

(a) Since 1973 there has been an explosion of relevant scientific and medical knowledge. Motion, page 14, paragraph 25. Brief, pages 25-27.

(b) New knowledge reveals that the abortion industry does not adequately protect women, nor provide women with the protections of a true doctor-patient relationship. Motion, page 14, paragraph 26. Brief, pages 27-32.

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based on the assertion of changed factual and legal circumstances which necessarily implies the passage of time. It was not until very recently that Plaintiff was able to discern a significant development in scientific knowledge and law,[23] and therefore, it was an abuse of discretion to deny the motion.[24] Furthermore, Plaintiff had to wait until the law had significantly changed to justify an attempt to overturning the 1973 judgment.[25] To manifest injustice means to become clear and obvious, not a vague or shadowy showing. After it became clear and manifest, Plaintiff required time to gather such evidence to meet the threshold condition of Rule 60(b).[26]

(c) New evidence now exists to show the physical and mental consequences of abortion on women. Motion, pages 15-16, paragraphs 27-29. Brief, pages 32-39.

(d) New facts have been revealed regarding the decision made in *Doe v. Bolton,* the companion case to *Roe,* showing that severe fraud was committed on the court in that case. Motion pages 16-17, paragraph 30. Brief, pages 41-42.

[23] The United States Supreme Court stated in *Roe* that it was unable "to arrive at any consensus . . . in the development of man's knowledge . . . " Roe v. Wade, 510 U.S. 113, 181 (1973). There has been a gradual development of scientific knowledge coupled with the gradual implementation of new law which makes this an extraordinary piece of litigation. Furthermore, neither Plaintiff nor the court can ascertain a precise moment when the factual and legal conditions changed so dramatically as to make *Roe* manifestly unjust.

[24] Clark v. Burkle, 570 F.2d 824, 832 (8th Cir. 1978) (denying hearing is abuse of discretion and noting that "this is not an ordinary run of the mill piece of litigation").

[25] *See* Agostini v. Felton, 521 U.S. 203, 212 (1997) (waiting twelve years to bring Rule 60 motion because it took that long for the evolving changes in law to become apparent).

[26] Marderosian v. Shamshak, 170 F.R.D. 335, 338 (D. Mass. 1997) (holding that Rule 60(b) is "a vehicle for 'extraordinary relief' and that

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10. Alternatively, the Court rejected Plaintiff's Motion asserting that the issue was not pled and proven.[27] However, throughout the Motion and Supporting Brief, Plaintiff details the changes in both the factual and legal conditions that have occurred. These changes have occurred as recently as 2003. For example, one factual condition that has changed since 1973 is the whole state of man's scientific knowledge regarding the humanity of the child. The humanity of the child was unknown in 1973 as even the United States Supreme Court recognized in *Roe*.[28] This factual condition has not become known until quite recently with advances in scientific knowledge;[29] but neither Plaintiff nor the court can really say with exact certainty when that point in man's knowledge was crossed. The change in factual conditions has been an evolving process with an explosion of medical and scientific knowledge as well as advances in technology in recent years. Such knowledge and advances were discussed in Plaintiff's Motion and Supporting Brief and would have been presented at an evidentiary hearing. Furthermore, this case is totally unlike the typical tort or fraud case where some bit of knowledge about the fraud or

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moving party "must give the trial court reason to believe that vacating the judgment will not be an empty exercise"). *See* attached Affidavit of Allan Parker on the difficulty of gathering evidence, Appendix to the Motion, Tab A.

[27] Order Denying Rule 60(b) Motion at 7 (June 19, 2003).

[28] The Court stated: "We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer." *Roe v. Wade,* 410 U.S. 113, 181 (1973). Furthermore, as recently as 2002, the court has acknowledged that it is a question of fact. Acuna v. Turkish, 354 N.J. Super. 500, 808 A.2d 149 (2002).

[29] *See* Appendix to this Motion, Tab D.

some other easily established fact becomes known at some exact point in time, and then the litigant must act promptly. As the United States Supreme Court recognized in its most recent decision on the issue, the humanity of the child was at that time still a matter of some controversy with irreconcilable points of view.[30] Many may still dispute the point Plaintiff is making. Plaintiff has not waited until there was absolute consensus on the point, but only until she could prove to the court with a substantial development of medical and scientific knowledge that the decision in her case has become manifestly unjust.[31] To do otherwise would be merely a matter of Plaintiff's speculation and opinion and not medical and scientific knowledge that the court should consider. Plaintiff's personal opinions and speculation are not controlling in the Rule 60 Motion; only the changes in the factual and legal conditions that make the judgment no longer equitable in prospective application are controlling.

11. Other changes in the factual conditions include the real life experiences of the women who have had abortions. At the time of *Roe,* the Supreme Court could only make assumptions as to the effect on women or whether there would be a normal doctor-patient relationship between the woman and the abortionist. Now, the court can read the sworn statements of the physical, emotional, and psychological harm that occur to women who have abortions.[32] As

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[30] Stenberg v. Carhart, 530 U.S. 914, 920 (2000).

[31] In Carhart, the United States Supreme Court discussed the "significant medical authority supports the proposition . . . " Stenberg v. Carhart, 530 U.S. 914, 932 (2000).

[32] *See* Affidavits by the over 1,000 post abortive women at Tab B of the Original Motion.

the affidavits to the Motion and Supporting Brief attest, the women have not been able to deal with the issues for decades after the abortion.[33] Medical knowledge is now able to confirm what the women have experienced – that women cannot deal with these traumatic circumstances until years later.[34] Therefore, it has taken time to deal with their circumstances and to be able to testify as to the effects of abortion. In light of these factual circumstances, Plaintiff's Motion was made within a reasonable amount of time.

12. In addition to the changes in factual conditions, there have been significant legal changes that justify Plaintiff's Rule 60 Motion. As discussed in Plaintiff's Rule 60 Motion and Supporting Brief which is incorporated herein, the United States Supreme Court has, over time, continued to restrict and undermine the legitimacy of *Roe v. Wade.* These cases have included, but are not limited to, *Webster v. Reproductive Services,*[35] *Planned Parenthood v. Casey,*[36] and *Washington v. Glucksberg.*[37] Even in its most recent ruling, the United States Supreme Court has recognized that " . . . this Court, in the course of a generation, has determined and then redetermined" what the

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[33] *See* Affidavits in Tab D and E of the Original Motion; *see also* Affidavit of Dr. Burke in Support of this Motion, Appendix, Tab B and Affidavit of Dr. Reardon in Support of this Motion, Appendix, Tab C.

[34] *See* attached Affidavit of Dr. Burke. The Affidavit of Dr. Burke explains that it can take women decades to recognize their grief, seek healing, and then overcome political and social stigmas in order to be able to speak out about the pain they have suffered from aborting a child.

[35] 492 U.S. 490 (1989).

[36] 505 U.S. 833 (1992).

[37] 521 U.S. 702 (1997).

basic constitutional protections are in the area of abortion and how they should be applied in particular circumstances.[38]

13. Similarly, in recent years, there have been significant changes in the law of federalism. Plaintiff's Original Motion and Supporting Brief discuss this issue in detail. However, it is sufficient to say at this juncture that significant changes were made between 1995 and 2000.[39] During this period, commentators across the country have been split on such issues as whether the United States Supreme Court was serious about expanding federalism, how it would be impacted by the fragile 5-4 split on the Court, what the parameters would be.[40]

14. In addition to changes in the decisional law, there have been significant changes in statutory law. Most notably are the statutory provisions that allow a mother to drop off an unwanted child with no threat of criminal prosecution.[41] In 2003, at least forty states now have such provisions. This is a legal change that gives women alternatives to abortion that were not available until just

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[38] Stenberg v. Carhart, 530 U.S. 914, 920 (2000).

[39] *See, e.g.,* United States v. Lopez, 514 U.S. 549 (1995) and United States v. Morrison, 529 U.S. 598 (2000).

[40] *See generally,* J. Harvie Wilkinson III, *The 2000 Justice Lester W. Roth Lecture: Federalism for the Future,* 74 S. CAL. L. REV. 523, 539-40 (2001) (stating the balance between national and state authority is "one of the new century's defining domestic struggles" and the answers are "neither absolute nor simple.").

[41] *See* Plaintiff's Original Rule 60 Motion at fns 42 and 43 discussing these statutes.

recently. In the majority of states, this was not available until 2001.[42]

FACTORS CONSTITUTING "REASONABLE TIME"

15. In addition, the courts have outlined the factors for determining whether Plaintiff filed the Rule 60 Motion within a reasonable time.[43] The first factor for determining what is a reasonable time is "the practical ability of the litigant to learn earlier of the grounds relied upon."[44] In 1973, the United States Supreme Court held that those trained in the respective disciplines of medicine, philosophy, and theology were unable to arrive at any consensus as to when life begins.[45] Even in the year 2000, the United States Supreme Court still did not know when human life begins recognizing the "controversial nature of the problem" and stating that there are "irreconcilable points of view."[46] It is clear that even in recent years the United States Supreme Court has struggled with the issue even with its access to the current medical and scientific information. On the other hand, Plaintiff, an uneducated person,[47] would not have known or have been capable of gathering this evidence to present to the Court. For Plaintiff, as well as the medical, scientific, and legal communities, it has been

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[42] There was one state in 1999; 13 more in 2000; 18 more in 2001; 7 more in 2002; and 1 more so far in 2003.

[43] *See* Traveler's Ins. Co. v. Liljeberg Enterprises, Inc., 38 F.3d 1404 (5th Cir. 1994).

[44] *Id.* at 1410 (*quoting* Ashford v. Stewart, 657 F.2d 1053, 1055 (9th Cir. 1981).

[45] Roe v. Wade, 410 U.S. 113, 181 (1973).

[46] *See* Stenberg v. Carhart, 530 U.S. 914, 920 (2000).

[47] *See* Plaintiff's Affidavit at Tab A of the Original Rule 60 Motion.

a developmental process with changes in factual and legal conditions not fully coming to fruition until recently. Therefore, Plaintiff did not have the "the practical ability . . . to learn earlier of the grounds relied upon," thereby meeting the first factor.

16. The abortion industry hides the true facts from individuals such as Norma McCorvey.[48] Although the United States Supreme Court in *Roe v. Wade* assumed that there would be a normal doctor-patent relationship between the women and the abortionists,[49] the real life experiences of the women who have had abortions, and the testimony of individuals who have worked in abortion clinics demonstrates that the abortion industry does not adequately protect women.[50] It is only years later that the

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[48] *See* Affidavit of Plaintiff Norma McCorvey, attached to the Original Motion in the Appendix, Tab A, pp. 1-14; see also the Affidavits of more than one thousand Post-Abortive Women, attached to the Original Motion in the Appendix, Tab B, pp. 15-1410; the Affidavit of Theresa Burke, Ph.D., attached in the Original Motion in the Appendix, Tab D, pp. 1422-1667; the Affidavit of David Reardon, Ph.D., attached to the Original Motion in the Appendix, Tab E, pp. 1668-1804, Exhibits to Affidavit of David Reardon, Ph.D., attached to the Original Motion in the Appendix, Tab E, pp. 1668-1804, Exhibits to Affidavit of David Reardon, Ph.D., Appendix, Tab E, pp. 1805-4307; Client Intake Records for Pregnancy Care Centers, attached to the Original Motion in the Appendix, Tab F, pp. 4308-5188; Affidavit of Carol Everett, former abortion provider, attached to the Original motion in the Appendix, Tab G, pp. 5189-5196.

[49] Roe v. Wade, 410 U.S. 113, 166 (1973).

[50] *See* Affidavit of Plaintiff Norma McCorvey, attached to the Original Motion in the Appendix, Tab A, pp. 1-14; see also the Affidavits of more than one thousand Post-Abortive Women, attached to the Original Motion in the Appendix, Tab B, pp. 15-1410; the Affidavit of Theresa Burke, Ph.D., attached in the Original Motion in the Appendix, Tab D, pp. 1422-1667; the Affidavit of David Reardon, Ph.D., attached to the Original Motion in the Appendix, Tab E, pp. 1668-1804, Exhibits to Affidavit of David Reardon, Ph.D., attached to the Original Motion in

(Continued on following page)

women realize that they were not properly informed of the physical, emotional, and psychological effects of abortion.[51]

17. The second factor in determining whether Plaintiff filed the Rule 60 Motion within a reasonable time is whether there is prejudice to the other parties.[52] There is, of course, no prejudice to the District Attorney Dallas County since Norma McCorvey is now agreeing with his 1970 position in the lawsuit that he has the authority under the Constitution to prosecute under the Texas Criminal Abortion Statute. In fact, the Dallas County District Attorney's Office has neither agreed to nor opposed the Motion. If the interests of his office were adversely affected, he would have opposed the Motion. The same is true for the State of Texas. The State certainly is not prejudiced by having a former adversary adopt its position. On the contrary, the State has the authority to protect women and children from abortion. The interests of the adverse parties are actually advanced rather than being prejudiced, and therefore, the second factor is met.

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the Appendix, Tab E, pp. 1668-1804, Exhibits to Affidavit of David Reardon, Ph.D., Appendix, Tab E, pp. 1805-4307; Client Intake Records for Pregnancy Care Centers, attached to the Original Motion in the Appendix, Tab F, pp. 4308-5188; Affidavit of Carol Everett, former abortion provider, attached to the Original motion in the Appendix, Tab G, pp. 5189-5196.

[51] *See* Affidavits of the Post Abortive Women, Appendix to the Original Motion, Tab B.

[52] Traveler's Ins. Co. v. Liljeberg Enterprises, Inc., 38 F.3d 1404, 1410 (5th Cir. 1994). Even assuming arguendo that the Motion was not filed as promptly as it might have been, the courts will allow it where there is no detriment to the opposing party. *See* Federal Deposit Ins. Corp. v. Castle, 781 F.2d 1101 (5th Cir. 1986) (allowing motion because there was no detrimental reliance on part of opposing party); In re Pacific Far East Lines, 889 F.2d 242 (9th Cir. 1988) (allowing motion because there was no prejudice to opposing party).

18. The third factor in determining whether Plaintiff filed the Rule 60 Motion within a reasonable time concerns the court's interest in finality.[53] It is certainly true that there is an interest in finality in any judgment. But when a decision of the United States Supreme Court is involved, as opposed to litigation between private parties, the Supreme Court has made it clear the mere passage of time, even up to twelve years,[54] is not a bar to seeking justice. Justice outweighs the interest in finality.[55] By analogy, this is also true regarding Rule 60(b)(4) motions.[56] Courts have repeatedly stated that there is no time limit to Rule 60(b)(4).[57] Furthermore, the "doctrine of laches has no effect."[58] Conversely, "no court has denied relief under

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[53] Traveler's Ins. Co. v. Liljeberg Enterprises, Inc., 38 F.3d 1404, 1410 (5th Cir. 1994).

[54] *See* Agostini v. Felton, 521 U.S. 203 (1997) (requiring Rule 60 after twelve years because it was no longer just); *see also* Rufo v. Inmates of the Suffolk County Jail, 502 U.S. 367 (1992) (allowing after ten years because it was no longer just); Railway Employees v. Wright 364 U.S. 642 (1961) (allowing after twelve years).

[55] The courts determined that "[t]he general purpose of Rule 60(b) . . . is to strike a proper balance between the conflicting principles that litigation must be brought to an end and that justice must be done." Charter Township of Muskegon v. City of Muskegon, 303 F.3d 755 (6th Cir. 2002) (in striking the balance, justice outweighed finality with a judgment that was twenty-eight years old.) *accord* Stipelcovich v. Sand Dollar Marine, 805 F.2d 599, 604 (5th Cir. 1986) (finding the justice-function of the courts demands that it must yield, in appropriate circumstances, to the equities of the particular case in order that the judgment might reflect the true merits of the cause.'"

[56] *See* Jackson v. FIE, Corp. 302 F.3d 515, 523 (5th Cir. 2002) (*citing* numerous primary and secondary authority).

[57] *See id.* (reasoning that "the mere passage of time cannot convert an absolutely void judgment into a valid one").

[58] *Id.*

Rule 60(b)(4) because of delay."[59] Therefore, the third factor is met.

THREE-JUDGE COURT

19. This Court ruled that because "a single judge can entertain a post-judgment motion such as this, the Court declines to request . . . a three-judge court."[60] Plaintiff respectfully disagrees. Plaintiff agrees that the relevant provision is the pre-amendment version of 28 U.S.C. § 2284.[61]

20. Section 2284 begins by indicating that "Any one of the three judges of the court may perform . . . " This presupposes that a three-judge court has been convened. In fact, a three-judge court had been convened in the original case of *Roe v. Wade*. However, at the present time, all three of those judges are deceased. Thus, it is necessary to reconvene a three-judge court as Plaintiff requested in her prayer. Because this was not done, a single judge who is not part of the three-judge court does not have jurisdiction.

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[59] *Id.* (*quoting* Bludworth Bond Shipyard, Inc. v. M/V Caribbean Wind, 841 F.2d 646, 649 n.6 (5th Cir. 1988)).

[60] Order Denying Rule 60(b) Motion at 2 (June 19, 2003).

[61] The pre-amended version of 28 U.S.C. § 2284 provides: "Any one of the three judges of the court may perform all functions, conduct all proceedings except the trial, and enter all orders required or permitted by the rules of civil procedure. A Single judge shall not appoint a master or order a reference, or hear and determine any application for interlocutory injunction or motion to vacate the same, or dismiss the action, or enter a summary or final judgment. The motion of the single judge shall be reviewable by the full court at any time before the final hearing."

21. Section 2284 also states that: "A single judge shall not . . . dismiss the action."[62] Plaintiff's Rule 60 Motion with Supporting Brief and over 5,000 pages of affidavits was summarily dismissed in two days without any time for analysis on the merits, response from the defendant, hearing on the various issues, or rebuttal from Plaintiff. Plaintiff also respectfully submits that it was error to classify her Rule 60 Motion as "simply whether the prior judgment should be reopened. It does not address final relief on the merits . . . "[63] The third request in Plaintiffs prayer was a request for "an order by the three-judge court that the judgment heretofore entered in favor of Plaintiff is vacated in light of changed legal and factual conditions because it is no longer just or equitable to give it prospective application."[64] This request sought final relief on the merits.

22. Section 2284 also requires that "[t]he action of a single judge shall be reviewable by the full court at any time before the final hearing." This is impossible since the request to reconvene the three-judge court was denied. Accordingly, the requirements of § 2284 were not met, and therefore, this Court did not have jurisdiction to rule on the Motion.

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[62] 28 U.S.C. § 2284; *see also* Ex Parte Poresky, 290 U.S. 30 (1933); Police Officers' Guide v. Washington, 369 F. Supp. 543 (D.D.C. 1973); New Jersey Chiropractic Assoc. v. State Bd. Of Medical Examiners, 79 F. Supp. 327 (D.N.J. 1948); Collins v. Bolton, 287 F. Supp. 393 (N.D. Ill. 1968).

[63] Order Denying Rule 60(b) Motion at 3 (June 19, 2003).

[64] Plaintiff's Original Rule 60 Motion at 17.

OTHER PROCEDURAL ISSUES

23. Although not part of this Court's decision, other procedural issues were raised in a footnote which will be briefly addressed.[65] At the time *Roe v. Wade* was originally decided, all of the procedural requirements had been met. The Rule 60 Motion merely seeks to re-examine the justice of the decision in light of the substantial changes in the factual and legal conditions that have occurred. No independent jurisdiction is needed to support a Rule 60(b) motion because the district court has continuing jurisdiction.[66]

24. By the plain language of Rule 60(b),[67] Plaintiff has standing to bring this Motion because she was a party in the "final judgment, order, or proceeding . . . "[68] The courts have followed this plain reading of the rule.[69] In essence, there is no question that Norma McCorvey was

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[65] Order Denying Rule 60(b) Motion at 8 (June 19, 2003).

[66] Charter Township of Muskegon v. City of Muskegon, 303 F.3d 755, 762 (6th Cir. 2002) (*quoting* Moore's FEDERAL PRACTICE § 60.84[1][a] (3d ed. 1997) that "It has been long established that no independent federal jurisdictional basis is needed to support a Rule 60(b) motion proceeding. A Rule 60(b) motion is considered a continuation of the original proceeding. "If the distrit court had jurisdiction when the suit was filed, it has jurisdiction to entertain a Rule 60(b) motion. This jurisdiction is not divested by subsequent events").

[67] Rule 60 states: "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding . . . "

[68] FRCP 60(b).

[69] *See* National Acceptance Co. v. Frigidmeats, 627 F.2d 764, 766 (7th Cir. 1980). *See generally* 11 Charles Alan Wright, Arthur R. Miller, et al, FEDERAL PRACTICE AND PROCEDURE "Jurisdiction" § 2865 at 225-26 (West 1973) (stating it is well settled that one who was not a party lacks standing to bring a Rule 60(b) motion).

and is a party. If the State tried to reopen the case, Plaintiff would certainly have standing to object if her views had not changed.

25. Mootness – The United States Supreme Court specifically addressed this issue in the original case.[70] The appellee argued that Roe's case was moot because she and all other members of the class were no longer pregnant.[71] The Court rejected this argument stating "pregnancy provides a classic justification for a conclusion of non-mootness."[72] Plaintiffs case was not moot in 1973 and it is not today. As a party, she has standing under the Rule 60 to bring this Motion. In addition, this Court concluded that "Whatever else it may or may not have done, the Supreme Court's *Roe* decision thirty years ago ended this lawsuit between these parties."[73] The holding in *Roe* is a continuing order and as such has not "ended." The law in Texas still makes it a crime to abort a baby and the only reason that the law is not enforced is because of the continuing action in the *Roe* decision. The judgment is continuing with the continuing harmful daily effects on women and children as demonstrated in 5,437 pages of affidavits. Thus, the injustice continues on a daily basis and "injustice anywhere is a threat to justice everywhere."[74]

26. Judicial estoppel – The doctrine of judicial estoppel prohibits a party from assuming a contrary

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[70] Roe v. Wade, 410 U.S. 124 (1973).

[71] *Id.* at 124.

[72] *Id.* at 125.

[73] Order Denying Rule 60(b) Motion at 8 (June 19, 2003)..

[74] Martin Luther King, Letter from a Birmingham Jail (April 16, 1963).

position merely because his interests have changed and especially if it prejudices another party.[75] The doctrine exists to protect the court against fraud and abuse and is discretionary in nature.[76] Plaintiff is not using inconsistent arguments to gain advantage in litigation. On the contrary, she is using the Rule 60 Motion to bring before the court changes of factual and legal condition that were unavailable when the case was originally litigated. Plaintiff is acting in good faith. In addition, there is no prejudice to another party. In a Rule 60 Motion, the change in factual and legal condition should be the primary concern and not the position of the parties.[77] The parties seeking relief had agreed to the judgment.[78] However, the Supreme Court said the change in law was the important fact which should guide the court, not the parties' position on the issue which has now changed.[79] The Court rejected the argument that the parties were bound even by the contractual agreement stating: "In short, it was the Railway Labor Act, [in this case the constitution], and only incidentally the parties, that the District Court served in entering the consent decree now before us . . . the court must be free . . . the parties have no power to require the court continuing enforcement of rights the statute no longer gives."[80]

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[75] New Hampshire v. Maine, 532 U.S. 742, 749 (2001).

[76] 18 Moore's FEDERAL PRACTICE § 134.34 (*citing* New Hampshire v. Maine, 532 U.S. 742 (2001)).

[77] Railway Employees v. Wright, 364 U.S. 642 (1961).

[78] *Id.*

[79] *Id.* at 651-52.

[80] *Id.*

27. *Stare Decisis* – the United States Supreme Court specifically addressed the issue of *stare decisis* in *Agostini v. Felton*,[81] the only case dealing with overturning prior Supreme Court rulings directly by Rule 60. It stated that "The *stare decisis* doctrine does not preclude this Court from recognizing the change in its law . . . "[82] The Court went on to state that "*stare decisis* does not prevent us from overruling a previous decision where there has been significant change in or subsequent development of our constitutional law."[83] Nor does the "law of the case" doctrine apply where "adherence to that decision would undoubtedly work a 'manifest injustice'."[84]

28. Binding precedent – although under normal circumstances, United States Supreme Court precedent is binding upon this Court, a Rule 60 Motion means that

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[81] Agostini v. Felton, 521 U.S. 203 (1997).

[82] *Id.* at 235.

[83] *Id.* at 235-36. In supporting this proposition, the Court quoted United States v. Gaudin, 515 U.S. 506 (1995) stating that *stare decisis* may yield where a prior decision's "underpinnings [have been] eroded, by subsequent decisions of this Court"; Alabama v. Smith, 490 U.S. 794, 803 (1989) indicating that "later development of . . . constitutional law" is a basis for overruling a decision; and, Planned Parenthood v. Casey, 505 U.S. 833, 857 (1992) recognizing that a decision could be overruled where "development of constitutional law since the case was decided has implicitly or explicitly left [it] behind as a mere survivor of obsolete constitutional thinking."

[84] Agostini v. Felton, 521 U.S. 203, 236 (1997). In granting the Rule 60 Motion, the Court surmised that lower courts had "relied on a legal principle that had not withstood the test of time." *Id.* at 237. Certainly with the substantial factual and legal changes that have taken place and the Affidavits from over a 1,000 women who have testified that abortion hurts women, this Court should no longer rely on a legal principle and premise that abortion helps women because it has not withstood the test of time and experience.

there have been changes in the factual and legal conditions that demand a change in ruling to prevent injustice. That is why it was critical to have granted Plaintiff's repeated requests for a hearing – fourteen in all – from the Original Motion.[85] This Court has both the power and duty

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[85] Following are the requests for evidentiary hearing in the Original Rule 60 Motion:

(a) Request for Evidentiary Hearing and Oral Argument, Motion Page 3.

(b) There has been a significant change in both the factual and legal landscapes surrounding this cause of action since the three-judge court's original ruling in this case. Motion Page 3, Paragraph 8.

(c) In respect to the factual allegations, there must be a factual determination made, an opportunity for the presentation of evidence, and a development of a full record. A thorough hearing and development of an adequate fact-finding record is necessary in order for the Court, and in the event of an appeal, the Appellate Court, to make fully informed, intelligent and well-reasoned decisions. Appellate Courts do not conduct their own fact-finding hearings; they rely upon the lower courts to develop a proper record. Motion, Page 3, Paragraph 8.

(d) The "threshold issue" 'is whether the factual landscape has changed since the Court's previous decision. Motion, Pages 3-4, Paragraph 9, Note 6. Factual matters should be decided by the trial court.' *Id.*

(e) "The importance of these cases and the issues raised in Plaintiffs Motion for Relief From Judgment warrant a full and complete factual exposition of changed factual circumstances. Accordingly, pursuant to the Federal Rules of Civil Procedure, Plaintiff hereby requests an evidentiary hearing and oral argument before the three judge court in order to present the evidence and legal authorities now available to the Court" Motion, Page 4, Paragraph 9.

(f) "Further the evidence as presented herein and as Plaintiff will present at the evidentiary hearing and oral argument as requested herein will show that the prior decision of the Court is clearly erroneous and would work a manifest injustice if applied prospectively." Motion, Page 5, Paragraph 12.

(Continued on following page)

(g) "New factual and legal evidence since the Court's decision in *Roe* and its companion case, *Doe*, as presented herein, in the Brief in Support of this Motion (incorporated herein by reference), and as will be presented to the Court at the evidentiary hearing requested by Plaintiff, now establishes that *Roe* and *Doe* have become and 'instrument of wrong'." Motion, Page 6, Paragraph 13, Note 16.

(h) "Just as *Brown v. Board of Education*, note 1 247 US 483 (1954), overturned *Plessy v. Ferguson*, note 2, 163 U.S. 537 (1896), because subsequent facts show that 'separate but equal' had become inherently unjust, the new facts revealed in this Motion (in the Brief in support of this Motion and which will be revealed in full detail at the evidentiary hearing requested herein) demonstrate that *Roe* is no longer just but inherently unjust and provide the decisional basis for the Court to vacate their previous ruling in this cause." Motion, Page 13, Paragraph 23.

(*i*) "New scientific and medical evidence and advances in technology since 1973, as described herein and *as will be more thoroughly presented at the evidentiary hearing* requested in this cause, clearly demonstrate that human life begins at conception and therefore the previous ruling in this cause should be vacated as it would be unjust to have prospective application." (Emphasis added) Motion, Page 13, Paragraph 24, 48 (See scientific medical analysis attached hereto in Appendix, Tab H, pp. 5197-5347; *see also* Agostini v. Felton, 521 U.S. 203 (1997).

(*j*) "The Affidavits attached hereto, the Brief in support of this Motion, and the *testimony to be presented at the evidentiary hearing* requested herein reveals new factual evidence that the abortion industry does not provide women with the protections of a true doctor-patient relationship" Motion, Page 14-15, Paragraph 26. (emphasis added).

(*k*) "New factual evidence regarding the physical and medical consequences on women, the result . . . is also available to the Court." Motion, Page 15, Paragraph 27.

(*l*) "In addition to the testimony of Plaintiff, Norma McCorvey, (both in the attached affidavit and her *live testimony to be given at the evidentiary hearing* requested herein), the attached women's affidavits from more than a thousand post-abortive women are the largest body of direct, sworn, factual evidence about the effects of abortion on women that has ever

(Continued on following page)

to hear that evidence of changed factual and legal conditions that would make a judgment unjust. It is also why the United States Supreme Court did not hesitate to grant the Rule 60 Motion in *Agostini* and overrule prior cases.[86]

DUE PROCESS

29. Plaintiff asserts that there has been a violation of her fundamental due process rights to notice and an opportunity to be heard on the issue of timeliness as well as the other issues raised in her Rule 60 Motion. Plaintiff requested a full hearing on all of her evidence and all the issues in her Motion and submitted 5,437 pages of evidence to support her Motion. However, this Court decided Plaintiffs Motion in two days without giving the other parties an opportunity to respond and without giving Plaintiff an opportunity to respond to any objections to the Motion. If the normal course of litigation had ensued, the State of Texas and the District Attorney would have had twenty days to respond.[87] If either party had raised the issue of unreasonable time, Plaintiff would have had

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been presented to the United States Courts." Motion, Page 15-15, Paragraph 28. (Emphasis added).

(*m*) The Women's Affidavits, the Brief in Support of this Motion, and *the new factual evidence*, previously unavailable to the Court that *will be presented at the evidentiary hearing requested* herein reveal . . . Items A through F. Motion, Page 16, Paragraph 29. (Emphasis added).

(n) "New facts previously unavailable to the Court have been revealed regarding the decision in *Doe v. Bolton* as well." Motion, Page 16-17, Paragraph 30.

[86] *See* the discussion in Agostini v. Felton, 521 U.S. 203, 235-36 (1997).

[87] *See* Local Rule 7.1(e).

fifteen days to respond to their attack with replies, including argument and affidavits if necessary.[88]

30. This Court candidly acknowledges that its decision to deny the Motion was based on the mere passage of thirty years. This was clear error based on that premise as well as a denial of due process. However, evidentiary hearings are proper where it will assist the plaintiff as well as the appellate court.[89] A hearing would have given this Court the benefit of all the facts as well as the benefit to the appellate court in reviewing the case.

THE EVIDENCE PRESENTED WAS SUFFICIENT TO GRANT THE MOTION

31. In the alternative, Plaintiff asserts that this Court should have granted the Motion on its merits if the Court had jurisdiction as part of a three-judge court. The Motion, Supporting Brief, and 5,437 pages of affidavits and expert testimony were sufficient to grant the Motion and vacate the original judgment as Plaintiff requested in her prayer for relief. A district court has discretion not to

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[88] *See* Local Rule 7.1(f).

[89] Clarke v. Burkle, 570 F.2d 824 (8th Cir. 1978). The court explained: "We do not say that an evidentiary hearing in connection with the Rule 60(b) motion would necessarily have done the plaintiff any good. However, to have held the hearing would have consumed little time and effort, and in ruling upon the motion and amendments, the district court would have had the benefit of all of the facts, and we would have had the benefit of those facts in reviewing the action of the district court on appeal. In our opinion the action of the trial court in failing to hold a hearing legally amounted to an abuse of discretion, and we think that a hearing must now be held by the district court." *Id.* at 832.

hear oral testimony on motions.[90] It is not an abuse of discretion where "an evidentiary hearing was unnecessary in view of the detailed record . . . "[91] In this case, Plaintiff provided the most detailed information that any court has received on the issue. It included its Motion and Supporting Brief with 5,437 pages of documentation. Especially in the absence of any objection by opposing parties, the Motion should have been granted. If the Court were unconvinced by the massive evidence presented, due process would then require a hearing with evidence to address the Court's *sua sponte* objections.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff Norma McCorvey respectfully prays for the following:

1. Grant this Motion for Reconsideration and set aside the Court's Order of June 19, 2003;
2. Grant the request for a three-judge panel;
3. Grant a hearing as requested in the Original Motion, or, in the alternative,
4. Grant Plaintiff's Rule 60 Motion based on the substantial accompanying evidence that to apply *Roe v. Wade* in the future would be unjust and inequitable.

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[90] Gary W. v. State of Louisiana, 601 F.2d 240, 244 (5th Cir. 1979).

[91] *Id.*

APPENDIX:

Tab A Affidavit of Allan E. Parker

Tab B Affidavit of Dr. Theresa Burke, Ph.D.

Tab C Affidavit of Dr. David C. Reardon, Ph.D.

Tab D Summary of Medical and Scientific Research Concerning the Affects of Abortion on Women

Respectfully Submitted,

THE JUSTICE FOUNDATION
(Formerly Texas Justice Foundation, and still doing business in Texas as the Texas Justice Foundation)
Attorneys for Plaintiff
Norma McCorvey, formerly known in this cause as Jane Roe

/s/ Allan E. Parker

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CERTIFICATE OF SERVICE

A true copy of the above and foregoing has been hand-delivered to: The Texas Attorney General, 300 W. 15th Street, Austin, Travis County. and the District Attorney for Dallas County, Frank Crowley Courts Building, 133 N. Industrial Blvd., LB 19, Dallas, Dallas County, Texas.

SIGNED on this the 3rd day of July, 2003.

/s/ Allan E. Parker
Allan E. Parker, Jr.

CERTIFICATE OF CONFERENCE

I hereby certify that I contacted the office of Bill Hill, District Attorney for Dallas County, Texas on June 30, 2003. Bill Hill's Office stated that he neither agreed to or opposed the Motion.

On three separate working days since the Order of June 19, 2003, Plaintiffs counsel has left telephone messages with Attorney General Greg Abbott's scheduler or Texas Solicitor General Ted Cruz requesting a consultation concerning this Motion for Reconsideration, either in person or by telephone. Such a request was made for the last time on July 2, 2003, the day before the Motion was due. Plaintiffs counsel has received no response from the State of Texas at this time. Texas Solicitor General Ted Cruz was consulted prior to the original Rule 60 Motion and took the position that the State was not a party.

SIGNED on this the 3rd day of July, 2003.

/s/ Allan E. Parker
Allan E. Parker, Jr.

No. 03-10711

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Norma McCorvey, formerly known as JANE ROE,
Plaintiff-Appellant

v.

WILLIAM "BILL" HILL, Dallas County District Attorney, As Successor in Office to Henry Wade
Defendant-Appellee.

On Appeal from the United States District Court
For the Northern District of Texas

PETITION FOR REHEARING EN BANC

THE JUSTICE FOUNDATION
(Formerly Texas Justice Foundation, and still doing business in Texas as the Texas Justice Foundation)
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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Fifth Circuit Rule 28.2.1, the undersigned counsel of record certifies that the following listed persons and entities have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Plaintiff-Appellant:

Norma McCorvey

Plaintiff-Appellant Represented by:

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Other Potentially Interested Parties:

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Ted Cruz
Solicitor General for the State of Texas
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/s/ Allan E. Parker, Jr.
Allan E. Parker, Jr.,
Lead Counsel

STATEMENT OF IMPORTANCE

TO THE HONORABLE COURT:

NORMA MCCORVEY, formerly known in this Court as Jane Roe of *Roe v. Wade*, the Plaintiff-Appellant (hereinafter referred to as "McCorvey") respectfully requests a rehearing en banc of her Rule 60 Motion which was denied on September 14, 2004, based solely on the legally and factually erroneous conclusion that the Texas abortion

statute(s), which are the subject of the Rule 60 Motion, have been repealed by implication through subsequent actions of the Texas Legislature regulating and restricting abortions.

Pursuant to FED. R. APP. P. 35, McCorvey files this Petition to reconsider the Court's decision of September 14, 2004. This case involves questions of exceptional national importance due to the changed legal and factual conditions that show *Roe v. Wade* is no longer just and harms women all across this nation. As Judge Jones correctly states:

> In sum, if courts were to delve into the facts underlying *Roe*'s balancing scheme with present-day knowledge, they might conclude that the woman's "choice" is far more risky and less beneficial, and the child's sentience far more advanced, than the *Roe* Court knew. . . . [1]

Judge Jones went on to say:

> At the same time, because the Court's rulings have rendered basic abortion policy beyond the power of our legislative bodies, the arms of representative government may not meaningfully debate McCorvey's evidence. The perverse result of the Court's having determined through constitutional adjudication this fundamental social policy, which affects over a million women and unborn babies each year, is that the facts no longer matter . . . [2]

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[1] Panel Opinion at 11 (September of 14, 2004) (Jones, J. concurring). *See* attached Exhibit A.

[2] *Id.* at 11-12.

Judge Jones concludes:

> One may fervently hope that the Court will someday acknowledge such developments and re-evaluate *Roe* and *Casey* accordingly. That the Court's constitutional decision making leaves our nation in a position of willful blindness to evolving knowledge should trouble any dispassionate observer . . .[3]

In this case of exceptional national importance that affects over a million women and unborn babies each year, no meaningful discussion of the evidence has occurred because the Rule 60 Motion was denied for mootness on the basis that the Texas abortion statutes are repealed by implication, an argument raised for the first time by this Court, without benefit of briefing. McCorvey respectfully disagrees.

This Court's majority and concurring opinions acknowledge that the trial court erred in determining that the Rule 60 motion was *per se* untimely due to the length of time since the original decision. They also acknowledge that the affidavit and other evidence may well raise a substantial issue as to whether the requisite changed circumstances do in fact exist in this case, calling for invocation of principles of justice and fairness to modify the original ruling under Rule 60. This Court's opinions further confirm that based on the procedural conundrum created by the panel's decision regarding abortions and the life and liberty issues involved in this case, there may very well be no avenue within our judicial system, other than the present case, to allow a reconsideration of the incredibly important legal, societal, and moral issues raised by this case.

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[3] *Id.* at 12.

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STATEMENT OF THE ISSUES

Two issues are presented for rehearing:

1. Did the panel err in its decision on mootness because no independent jurisdictional basis is needed for a Rule 60 Motion by a Party?

2. Did the panel err in its decision on mootness because Texas has consistently banned or restricted abortion except to save the life of the mother to the full extent of the constitution and therefore has not repealed its ban by implication?

STATEMENT OF THE COURSE OF PROCEEDINGS AND DISPOSITION OF THE CASE

On June 17, 1970, a three judge court declared the Texas abortion laws unconstitutional.[4] On January 22, 1973, the United States Supreme Court affirmed.[5]

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[4] *Roe v. Wade*, 314 F. Supp. 1217 (N.D. Tex. 1970) (hereinafter "District Court Roe").

[5] *Roe v. Wade*, 410 U.S. 113 (1973) (hereinafter "Roe").

On June 17, 2003, McCorvey filed a Rule 60 Motion for Relief from Judgment based on *Agostini v. Felton*.[6] Two days later, on June 19, 2003, the district court denied the Rule 60 and later denied McCorvey's Motion for Reconsideration.

An appeal was timely filed with this Court on October 9, 2003. McCorvey argued that the district court abused its discretion because: (a) it ignored this Court's recent directive in *Collins v. Morgan, Stanley Dean Witter*[7] for proper consideration of Rule 60 motions; (b) the motion was timely filed, her evidence was legally sufficient and uncontradicted, and other procedural requirements had been met; (c) an evidentiary hearing considering the significant changes in the factual and legal conditions should have been held; and, (d) it lacked jurisdiction to enter an order denying a three-judge court.

On September 14, 2004, the panel of Judges Jones, Wiener, and Prado dismissed the appeal and held that (a) although the original action was tried by a three-judge court, the Rule 60(b) motion was not a matter for a three judge court;[8] (b) the district court erred in concluding that a 30-year delay was too long; (c) the case was moot even though the district court did not address that issue;[9] and, (d) the district court did not abuse its discretion in denying an evidentiary hearing.[10] The panel did not address the issue of whether 5,437 pages of uncontroverted evidence

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[6] 521 U.S. 203 (1997).

[7] 224 F.3d 496 (5th Cir. 2000).

[8] Panel Opinion at 3 (September 14, 2004).

[9] Panel Opinion at 6, n.4 (September 14, 2004).

[10] Panel Opinion at 6-7 (September 14, 2004).

was legally sufficient to compel granting the Motion. The Court held that the Texas statutes criminalizing abortion had been repealed by implication.[11]

STATEMENT OF FACTS

McCorvey presented over 5,000 pages of sworn, uncontroverted evidence of substantial changes in legal and factual conditions which demonstrate that *Roe* is a live controversy and no longer just. In addition, in this Petition, McCorvey traces the legislative provisions that demonstrate the Texas abortion statutes were not repealed either expressly or by implication.

ARGUMENT

I. THE PANEL ERRED BECAUSE NO INDEPENDENT JURISDICTION IS NEEDED TO SUPPORT A RULE 60 MOTION, AND THEREFORE, MCCORVEY HAS MET ALL PROCEDURAL REQUIREMENTS.

At the time *Roe v. Wade* was originally decided, all of the procedural requirements had been met. The Rule 60 Motion merely seeks to re-examine the justice of the decision in light of the substantial changes in the factual and legal conditions that have occurred. No independent jurisdiction is needed to support a Rule 60(b) motion because the district court has continuing jurisdiction.[12] In

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[11] Panel Opinion at 5-6 (September 14, 2004).

[12] *Charter Township of Muskegon v. City of Muskegon*, 303 F.3d 755, 762 (6th Cir. 2002) (*quoting* MOORE'S FEDERAL PRACTICE § 60.84[1][a] (3d ed. 1997) that "It has been long established that no independent federal jurisdictional basis is needed to support a Rule

(Continued on following page)

fact, it is only the Supreme Court's decision in *Roe* which prevents Texas from enforcing its law banning abortion except to save the life of the mother. Therefore, there are no jurisdictional impairments. By the plain language of Rule 60(b),[13] McCorvey has standing to bring this Motion because she was a party to the "final judgment, order, or proceeding . . . "[14] The courts have followed this plain reading of the rule.[15] In essence, there is no question that Norma McCorvey was and is a party.

II. THE PANEL ERRED IN ITS DECISION ON MOOTNESS BECAUSE TEXAS HAS CONSISTENTLY BANNED OR RESTRICTED ABORTION TO THE FULL EXTENT OF THE *ROE* CONSTITUTIONAL LIMITATIONS, AND THEREFORE, THE TEXAS ABORTION STATUTES HAVE NOT BEEN REPEALED BY IMPLICATION.

McCorvey contends that the Texas abortion statutes have not been repealed expressly or by implication. The

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60(b) motion proceeding. A Rule 60(b) motion is considered a continuation of the original proceeding. "If the district court had jurisdiction when the suit was filed, it has jurisdiction to entertain a Rule 60(b) motion. This jurisdiction is not divested by subsequent events.").

[13] FED. R. CIV. P. 60(b) states: "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding . . . "

[14] FED. R. CIV. P. 60(b).

[15] *See National Acceptance Co. v. Frigidmeats*, 627 F.2d 764, 766 (7th Cir. 1980). *See generally* 11 Charles Alan Wright, Arthur R. Miller, et al, FEDERAL PRACTICE AND PROCEDURE "Jurisdiction" § 2865 at 225-26 (West 1973) (stating it is well settled that one who was not a party lacks standing to bring a Rule 60(b) motion).

panel held that "because the statutes declared unconstitutional in *Roe* have been repealed, McCorvey's 60(b) motion is moot."[16] McCorvey respectfully disagrees. For the first time in this process, the panel raised the issue of the effectiveness of the Texas statutes. The argument originated in an amicus brief, but on February 23, 2004, the panel denied the motion to file the amicus brief. Therefore, this is the first opportunity that McCorvey has had to address the issue of mootness and the status of the abortion statutes.[17]

Historically, Texas has had statutory provisions against abortion dating back to 1854.[18] After *Roe* was decided in 1973, the Penal Code was revised, but the abortion provisions were expressly *not* repealed. The Disposition Table made it clear that certain articles were *unrepealed* even though they were not being transferred into the new Code. In fact, the Table was entitled "Disposition of **Unrepealed** Articles of the Texas Penal Code of 1925 and Vernon's Texas Penal Code." (emphasis added) The instructions for that Disposition Table stated the Legislature was giving new official citations of unrepealed articles.[19] The historical note

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[16] Panel Opinion at 6 (September 14, 2004).

[17] The panel raised this issue *sua sponte*. The request for oral argument was denied.

[18] *Jacobs v. Theimer*, 19 S.W.2d 846, 851 (Tex. 1975) (Pope, J. dissenting and contending Texas had a long standing rule against abortion which had "stood since 1854").

[19] The instructions for the Disposition Table stated in relevant part: "Pursuant to the authority granted by Section 5 of Chapter 399, Acts of the 63rd Legislature, the Texas Legislative Council has compiled the following table showing the new official citations of unrepealed articles of the 1925 Texas Penal Code and the new classifications of unrepealed statutes compiled as articles of Vernon's Texas Penal Code." *See* attached Exhibit B.

states they are unconstitutional because of *Roe v. Wade.* Thus, the Legislature has directly stated that the abortion articles are unrepealed.

In 1974, then-Attorney General John Hill wrote an opinion concerning the present status of Texas abortion laws.[20] After *Roe,* he concluded that "[t]herefore, there presently are no **effective** statutes of the State of Texas against abortion, per se."[21] (emphasis added) The Attorney General never said that they were repealed, he only said that the provisions were not "effective" because of the *Roe v. Wade* decision.

Furthermore, the Attorney General was asked that since *Roe v. Wade* declared the Texas statutes unconstitutional, "[W]hat guidelines and standards should now be used in reference to 'abortions' in this State?" The Attorney General outlined the types of regulations permitted under the Supreme Court opinion.[22] He said that "sponsors . . . should be guided by the principles discussed herein. . . ."[23] The legislature passed legislation based on the constitutional limitations of *Roe v. Wade* and the Attorney General's guidelines after the decision.

While the United States Supreme Court has not authoritatively resolved the issue of revival, it has been its practice[24] and "weighs in favor of revival."[25] Several state

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[20] OP. TEX. ATT'Y GEN. No. H-369 (1974).

[21] *Id.* at 3.

[22] *Id.* at 4-13.

[23] *Id.* at 13.

[24] *See generally* Treanor & Sperling, *Prospective Overruling and the Revival of "Unconstitutional" Statutes,* 93 Colum. L. Rev. 1902, 1908-09

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courts have explicitly addressed the revival issue, and with one exception, they have concluded that invalidated statutes are immediately enforceable when the invalidating decision is overturned.[26] Prior to the overruling decision, an invalidated statute "is dormant, but not dead."[27] Although few cases are on point, one court has stated:

> There are comparatively few cases dealing squarely with the question before us, but they are unanimous in holding that a law once declared unconstitutional and later held to be constitutional does not require reenactment by the legislature in order to restore its operative force. They proceed on the principle that a statute declared unconstitutional is void in the sense that it is inoperative or unenforceable, but not void in the sense that it is repealed or abolished; that so long

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(1993) (recognizing United States Supreme Court cases, state court cases, and almost every other commentators). *Id.* at 1908-17.

[25] Treanor & Sperling, *Prospective Overruling and the Revival of "Unconstitutional" Statutes*, 93 Colum. L. Rev. 1902, 1911 (1993); *see also* Benjamin, *Stepping into the Same River Twice: Rapidly Changing Facts and the Appellate Process*, 78 Tex. L. Rev. 269, n.63 (1999) (commenting on the Treanor & Sperling article and stating that "an invalidated statute simply becomes dormant, ready to be enforced as soon as a court finds that it is no longer invalid"); Smolin, *The Status of Existing Abortion Prohibitions in a Legal World Without Roe: Applying the Doctrine of Implied Repeal to Abortion*, 11 ST. LOUIS U. PUB. L. REV. 385, 392 (1992) (stating overwhelming consensus is that statutes automatically revive). (Attached as Exhibit C.)

[26] Treanor & Sperling, *Prospective Overruling and the Revival of "Unconstitutional" Statutes*, 93 Colum. L. Rev. 1902, 1913-14 n.50 *(citing Pierce v. Pierce*, 46 Ind. 86, 95 (1874); *State ex. Rel. Badgett v. Lee*, 22 So. 2d 804, 806 (Fla. 1945); *Christopher v. Mungen*, 55 So. 273, 280 (Fla. 1911); *State v. O'Neill*, 126 N.W. 454, 454 (Iowa 1910); *McCollum v. McConaughy*, 119 N.W. 539, 541 (Iowa 1909); *State v. Douglas, 278* So. 2d 245, 491 & n.6 (La. 1973); *State ex. Rel. Moore v. Molpus*, 578 So. 2d 624, 638 (Miss. 1991)).

[27] *Jawish v. Morlet*, 86 A.2d 96, 97 (D.C. 1952).

> as the decision stands the statute is dormant but not dead; and that if the decision is reversed the statute is valid from its first effective date. (citations omitted).[28]

By statute, Texas presumes that the intention of its Legislature is to be in "compliance with the constitutions of this state and the United States . . . "[29] and that "a just and reasonable result is intended."[30] If *Roe* is vacated on the grounds that it is no longer just, the just and legal result would be to revive the Texas law. Furthermore, "in interpreting a statute, a court shall diligently attempt to ascertain legislative intent and shall consider at all times the old law, the evil, and the remedy."[31] The "evil" Texas has consistently sought to avoid is unlimited abortion on demand. Texas purpose has always been to limit abortion as much as possible. The statutes are "the law of this state and shall be liberally construed to achieve their purpose and to promote justice."[32] The heart of Rule 60 is to do justice in light of the changed factual and legal conditions. If *Roe* is no longer just, Texas should not be punished for being mandated to follow the decision. Finally, since repeal by implication is disfavored, there is no irreconcilable conflict between the older and new statutes. The old "*Roe*" statutes allowed some abortions to save the life of the mother. The allowable abortions would still be governed by

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[28] *Id.; see also* 39 OP. ATT'Y GEN. 22 (1937) (stating unconstitutional statute remains on the "statute books" and is valid from the date it became effective).

[29] TEX. GOV'T CODE § 311.021.

[30] *Id.* § 311.021(3).

[31] *Id.* § 312.005.

[32] *Id.* § 312.006.

the newer statutes which are silent on the purpose for abortions.[33]

The issue of subsequent legislation becomes important concerning whether the statutory provisions were repealed by implication. The Legislature may repeal a statute either expressly or by implication.[34] Whether the repeal is express or implied is a question of legislative intent.[35] It is not within the power of the court to repeal legislation as that function is within the legislative power.[36] Federal courts particularly have no power to repeal state laws and would be bound by Texas interpretation of its intent since that is a question of state law.[37] It is a well known principle[38] that repeals by implication are not favored.[39] There

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[33] Unlike the statute in *Weeks v. Connick*, 733 F. Supp. 1036 (E.D. La. 1990), Texas had an exception to save the life of the mother. *Weeks* has been criticized for its flawed analysis. *See generally* Smolin, *The Status of Existing Abortion Prohibitions in a Legal World Without Roe: Applying the Doctrine of Implied Repeal to Abortion*, 11 ST. LOUIS U. PUB. L. REV. 385 (1992).

[34] *Gordon v. Lake*, 163 Tex. 392, 356 S.W.2d 138, 139 (1962).

[35] *Fisher v. State*, 830 S.W.2d 831 (Tex. App. – San Antonio, 1992); *see also* TEX. GOV'T CODE § 312.005 (1998) and its interpretive case law ns. 70-76.

[36] TEX. CONST. art. 3, § 1 states that the legislative power is vested in the Texas Legislature and TEX. CONST. art. 3, § 43 states that the Legislature is responsible for revising the laws and particular subject.

[37] *See generally* Smolin, *The Status of Existing Abortion Prohibitions in a Legal World Without Roe: Applying the Doctrine of Implied Repeal to Abortion*, 11 ST. LOUIS U. PUB. L. REV. 385, 394 (1992). The author also admonishes that "[t]he doctrine of implied repeal should not be used as a backdoor effort to exercise a power of judicial repeal of statutes that, under our system of separation of powers, cannot and does not exist." *Id.* at 402.

[38] *Bank of Texas v. Childs*, 615 S.W.2d 810, 820 (Tex. Civ. App. – Dallas 1981).

must be a "positive repugnance" between the old and new provisions to repeal by implication.[40] Absent an express repeal, the court must presume that the legislature intended the old statute to remain in operation.[41] Furthermore, it is presumed that the Legislature enacted a statute with complete knowledge of the existing law.[42] **The repeal of a statutory provision by implication will not be declared unless the legislative intent to repeal is so clear and apparent as to leave no room for either doubt or speculation.**[43] Here, the Legislature is responding to what the Supreme Court has done, and not to what the Legislature has done in prior sessions. This is a significant difference.

It is not reasonable to assume that the Legislature would repeal by implication what it expressly refused to

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[39] *See, e.g., Baugh v. Taylor,* 117 F.3d 197 (5th Cir. 1997); *Acker v. Texas Water Commission,* 790 S.W.2d 299, 301 (Tex. 1990); *Standard v. Sadler, 383* S.W. 2d 391 (Tex. 1964); *Gordon v. Lake,* 163 Tex. 392, 356 S.W.2d 138, 139 (1962); *Dendy v. Wilson,* 142 Tex. 460, 179 S.W.2d 269 (1944).

[40] *E.g., Acker v. Texas Water Commission,* 790 S.W.2d 299, 301 (Tex. 1990); *Winterman v. McDonald,* 129 Tex. 275, 102 S.W.2d 167, *reh'g denied,* 129 Tex. 275, 104 S.W.2d 4 (1937).

[41] *Chapman v. Southern Hospitalities, Inc.,* 624 S.W.2d 320, 322 (Tex. App. – Tyler 1981); *Folliott v. Bozeman,* 526 S.W.2d 577, 580 (Tex. Civ. App. – Corpus Christi 1975, writ ref'd n.r.e.). *See generally,* 67 TEX. JUR. 3d *Statutes* § 65 (2003) **(stating principle that "where there is no express repeal, the presumption is that in enacting a new law the legislature intended the old statute to remain in operation").**

[42] *E.g. Acker v. Texas Water Commission,* 790 S.W.2d 299 (Tex. 1990).

[43] *Samaniego v. Arguelles,* 737 S.W.2d 88, 89 (Tex. App. – El Paso 1987); *see also Allen v. Mauro,* 733 S.W.2d 228, 234 (Tex. App. – El Paso 1984).

repeal. In essence, it has been compelled to do so by the *Roe* decision.[44] More logical is the interpretation that the Legislature has followed the guidelines by the Attorney General since 1974 in regulating abortion and providing administrative, civil, and criminal penalties to the full extent of the law. If *Roe* were vacated, Texas would consider its original ban revived. As one author of an article directly on point states: "[T]hey should generally be viewed as measures intended to fill a gap created by *Roe* rather than as impliedly repealing pre-*Roe* legislation."[45] For example, Texas requires parental notification;[46] it denies funding to provide abortion services unless the mother's life is in danger;[47] it requires informed consent and provides penalties for violations;[48] it does not require employers to pay for health insurance benefits for abortion unless the life of the mother is endangered;[49] private entities are not required to make facilities available for abortion unless the life of the mother is in immediate danger;[50] and, it provides criminal and administrative

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[44] *See generally* Smolin, *The Status of Existing Abortion Prohibitions in a Legal World Without Roe: Applying the Doctrine of Implied Repeal to Abortion*, 11 ST. LOUIS U. PUB. L. REV. 385 (1992). (See attached as Exhibit C.)

[45] *Id.* at 402.

[46] TEX. FAM. CODE § 33.001 to § 33.011.

[47] TEX. HEALTH & SAFETY CODE § 32.005; *see also Bell v. Low Income Women of Texas*, 95 S.W.3d 253, 255 (Tex. 2002) (funding restrictions were constitutional and do not discriminate on the basis of sex and are rationally related to a legitimate governmental purpose).

[48] TEX. HEALTH & SAFETY CODE § 171.001 to § 171.005 (Women's Right to Know Act), and § 171.011 to § 171.018 (requiring informed consent and penalties for violations).

[49] TEX. LAB. CODE § 21.107.

[50] TEX. OCC. CODE § 103.004.

penalties for physicians who perform or procure criminal abortions.[51] All of these provisions show a desire to restrict abortions to the absolute minimum as required by *Roe* and its progeny and to not fund abortions.

The panel itself noted an exception to mootness applies "where there is evidence, or a legitimate reason to believe, that the state will reenact the statute or one that is substantially similar."[52] Yet the panel ignores all the subsequent legislation Texas has adopted whenever the new Supreme Court interpretations allow restrictions. History makes it clear that Texas would enforce its existing law since it has never repealed it in any way. Furthermore, with all pro-life executive and legislative leaders and platform, there is clearly some evidence to believe Texas authorities would either enforce the existing ban or quickly reenact it, if necessary, if *Roe* were overturned. Certification to the Texas Supreme Court could be made but is unnecessary in light of the clear non-repeal. McCorvey further contends that the case is not moot because it comes within three other exceptions to the mootness rule. The first exception is "capable of repetition, yet evading review." The United States Supreme Court specifically addressed this issue in this original case.[53] In 1973, the appellee argued that McCorvey's case was moot because she was no longer pregnant.[54] The Court rejected

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[51] TEX. OCC. CODE § 164.052. (prohibiting physician to perform or procure a criminal abortion or aids, abets, or attempts one); § 164.055 (allowing the board to take disciplinary action concerning abortion); and, § 201.502 (refusing, revoking, or suspending a chiropractors license for procuring or assigning in procuring an abortion).

[52] Panel Opinion at 5, n.3 (September 14, 2004).

[53] *Roe v. Wade*, 410 U.S. 124 (1973).

[54] *Id.* at 124.

this argument stating "pregnancy provides a classic justification for a conclusion of nonmootness" and "capable of repetition, yet evading review."[55] Judge Jones is correct in her concurring opinion that under the panel's interpretation "the Court will never be able to examine its factual assumptions on a record made in court," and therefore, no judicial forum exists whereby McCorvey's evidence "could be aired."[56] Thus, it would evade review, contrary to *Roe*'s mootness exception previously established in this case. In essence, such a ruling completely undermines Rule 60.[57] Any court which follows the substantive rule of *Roe,* with or without reservations, should, in the interest of true justice, also follow *Roe*'s relaxed mootness rule.

The second exception to mootness is "voluntary cessation of the challenged practice."[58] The holding in *Roe* is a continuing quasi-injunctive order. In *Roe,* the Supreme Court did not grant injunctive relief because the decision would and did have the same effect as an injunction. The Court said "we assume the Texas prosecutorial authorities will give full credence to this decision that the present criminal abortion statutes are unconstitutional."[59] Prosecutors in the State of Texas have respectfully, but voluntarily, given credence to the Court's decision. Prosecutors could change their mind and prosecute abortionists. The only way to get relief from a quasi-injunctive order is Rule 60 relief.

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[55] *Id.* at 125.

[56] Panel Opinion at 11 (September 14, 2004) (Jones, J. concurring).

[57] *See Agostini v. Felton,* 521 U.S. 203 (1997).

[58] *See* John E. Nowak & Ronald D. Rotunda, CONSTITUTIONAL LAW § 2.12 at 72 (7th ed. 2004).

[59] *Roe v. Wade,* 410 U.S. 113, 165 (1973).

The third exception to mootness is collateral consequences.[60] "Even though the primary dispute has settled through the passage of time, if there are collateral consequences to one of the parties – even if they are quite minor – the controversy is not moot."[61] As McCorvey has proved with her uncontroverted evidence, there are tremendous collateral consequences to the parties. Like the *Roe* Court, she once supported abortion until she worked in abortion clinics and the reality of abortion changed her mind.[62] McCorvey has suffered guilt, shame, public humiliation, anguish of soul, and what she believes is complicity in murder knowing that her case has caused the death of over 43 million babies. She has also suffered the pain of the women who have made sworn statements of the harm that abortion has caused them. The State of Texas has suffered the consequences of not being able to ban abortion which it had done since 1854. The women have suffered the collateral consequences of this ruling through physical, emotional, and psychological harm. The nation has suffered the collateral consequences as this decision has polarized Americans, influenced the political process and even the appointment of judges. Thus, both parties to this lawsuit and the nation have felt the collateral consequences of *Roe v. Wade*. Justice never sleeps, and it demands re-evaluation in light of new conditions.

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[60] *See* John E. Nowak & Ronald D. Rotunda, CONSTITUTIONAL LAW § 2.12 at 74 (7th ed. 2004).

[61] *Id.* at 75.

[62] *See* Affidavit of Norma McCorvey attached as Exhibit D; *see also* Affidavit of Sandra Cano, "Doe" of *Doe v. Bolton*, attached as Exhibit E. (Both attached to original Rule 60 Motion.)

PRAYER

WHEREFORE, PREMISES CONSIDERED, Appellant Norma McCorvey respectfully prays for the following:

1. Grant this Motion for Rehearing and set aside the district court's Order of June 19, 2003 and the panel's order of September 14, 2004;

2. Grant the request for a three-judge panel;

3. Grant a hearing as requested in the Original Motion, or, in the alternative,

4. Grant Appellant's Rule 60 Motion based on the substantial accompanying evidence that to apply *Roe v. Wade* in the future would be unjust and inequitable.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A true copy of the above and foregoing has been mailed to the District Attorney for Dallas County, Frank Crowley Courts Building, 133 N. Industrial Blvd., LB 19, Dallas, Dallas County, Texas.

SIGNED on this the 27th day of September, 2004.

/s/ Allan E. Parker, Jr.
Allan E. Parker, Jr.

CERTIFICATE OF COMPLIANCE

1. This Petition complies with the type-volume limitation of FED R. APP. P. 32(a)(7) because it is within fifteen pages excluding the parts of the Petition exempted by FED. R. APP. P. 32(a)(7)(B)(iii).

2. This Petition complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 point Times New Roman font.

SIGNED this the 27th day of September, 2004.

/s/ Allan E. Parker, Jr.
Allan E. Parker, Jr.
Lead Counsel

[LOGO] **The Justice Foundation**

[Address Omitted In Printing]

October 8, 2004

United States Court of Appeals
Fifth Circuit
Office of the Clerk
600 Camp Street
New Orleans, LA 70130

RE: ***No. 03-10711 McCorvey v. Hill***
USDC No. 3:03-CV-1340-N
Supplemental Material After Date of Petition For Rehearing En Banc to be Brought to the Court's Attention

To The Court:

Appellant McCorvey's Petition for Rehearing in this case was filed with the Court on September 28th. On October 5, 2004, The Center for Reproductive Rights released a new report called "What If Roe Fell? The State-by-State Consequences of Overturning *Roe v. Wade*". A copy of the cover pages and the Texas analysis is attached.

The analysis of this "leading legal advocacy organization" for abortion is relevant to and contradicts footnote 3 of the Panel Opinion which states there is no "reasonable belief that if [Texas] would reenact the statutory provisions struck down in *Roe*."[1] This major pro-abortion legal advocacy group states:

> "Given the current composition of the [Texas] legislature and the State's history of regulating

[1] Panel Opinion at page 5. n. 3.

> abortion heavily, it is likely that Texas would enact a new statute banning abortion. **CONCLUSION**: The United States Court of Appeals for the Fifth Circuit held in 2004 [in this case] that Texas' pre-Roe abortion ban had been repealed by implication. However, the legislature *is likely to enact a new abortion ban.*" (Emphasis supplied)[2]

Thus, the leading pro-abortion legal group agrees with McCorvey's Petition that Texas policy and intent is to ban abortion if constitutionally permitted, thus, the issue is not moot in accordance with Footnote 3's recognized exception to the mootness doctrine.

Sincerely,

/s/ Allan E. Parker
Allan E. Parker, Jr.
CEO

AEP:ea

cc: Dolena Westergard
R. Clayton Trotter
Linda Boston Schlueter
Jimmy D. "Skip" Hulett
Kathleen Cassidy
Sharon Blakeney
Harold Cassidy
Robert Baxter

[2] Attached.

What if *Roe* Fell?

The State-by-State Consequences of Overturning *Roe v. Wade*

SEPTEMBER 2004
CENTER FOR REPRODUCTIVE RIGHTS
120 WALL STREET
NEW YORK, NY 10005
WWW.REPRODUCTIVERIGHTS.ORG

The Center for Reproductive Rights

The Center for Reproductive Rights is the leading legal advocacy organization dedicated to promoting and defending women's reproductive rights worldwide. Founded in 1992 (as the Center for Reproductive Law and Policy), the Center has defined the course of reproductive rights law in the United States with significant victories in courts across the country, including two landmark cases in the U.S. Supreme Court: *Stenberg v. Carhart* (2000), and *Ferguson v. City of Charleston* (2001). Using international human rights law to advance the reproductive freedom of women, the Center has strengthened reproductive health laws and policies across the globe by working with more than one hundred organizations in 45 countries.

The State Legislative Program

The Center's state legislative program works with state legislators, governors, partner organizations, lobbyists, and coalitions to prevent the passage of laws that would harm women's reproductive health and to promote the passage of positive laws. The program monitors and analyzes pending legislation, providing an "early warning system" on bills that may require legal challenges. It also

offers model legislation, legal tools, and strategic advice to over 650 state contacts.

STATE PROGRAM
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The Center for Reproductive Rights is a charitable and nonpartisan organization and does not support any candidate or political party. The Center's intention in releasing this study is solely to educate advocates on the legal ramifications of a reversal of *Roe v. Wade* on a state-by-state level and not in any manner to endorse or oppose any candidates for public office.

[LOGO] TEXAS

TEXAS AT A GLANCE

EXISTENCE AND STATUS OF ABORTION BAN	STATE CONSTITUTIONAL PROTECTION OF ABORTION RIGHTS	STATUTORY PROTECTION OF ABORTION RIGHTS	OTHER FACTORS
Pre-Roe ban (with exception for woman's life) repealed by implication	Constitutional protecton specifically rejected by court	None	Highly vulnerable to enactment of new ban

RISK FACTORS	HIGH	MEDIUM	LOW

Existence and Status of Abortion Ban: In 2004, Texas's pre-*Roe* abortion ban was held to have been repealed by implication by the numerous subsequent statutes enacted by the legislature regulating abortion.[190] This pre-*Roe* ban was the law that was challenged in *Roe v. Wade* and held unconstitutional by the U.S. Supreme Court.

State Constitutional Protection of Abortion Rights: The Texas Supreme Court has specifically rejected the argument that the Texas Constitution provides broader protection for the right to abortion than the U.S. Constitution.[191]

Statutory Protection of Abortion Rights: None.

Other Factors: Given the current composition of the legislature and the state's history of regulating abortion heavily, it is likely that Texas would enact a new statute banning abortion.

Conclusion: The United States Court of Appeals for the Fifth Circuit held in 2004 that Texas's pre-*Roe* abortion

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[190] *McCorvey v. Hill*, No. 03-10711 (5th Cir. Sept. 14, 2004). In this action, Norma McCorvey, the original Jane Roe in *Roe v. Wade*, who is now opposed to abortion, sought to reopen the *Roe* case and have the abortion ban declared constitutional. The federal district court rejected her request without reaching the merits on the grounds that too much time has passed since the original judgment was entered. On appeal, the United States Court of Appeals for the Fifth Circuit held that the case was moot because the pre-*Roe* ban had been repealed by implication. *McCorvey v. Hill*, No. 03-10711 (5th Cir. Sept. 14, 2004).

[191] *Bell v. Low-Income Women of Tex.*, 95 S.W.3d 253 (Tex. 2002) (rejecting challenge to state restrictions on Medicaid funding for abortions on basis of state constitutional right to privacy, equal protection, and equal rights amendment).

ban had been repealed by implication. However, the legislature is likely to enact a new abortion ban.

Legislative Session in Texas: Jan. 11 – May 30, 2005
Source: National Conference of State Legislators (NCSL) website
http://www.ncsl.org/programs/legman/about/sess2005.htm